



STUDY SESSION

Agenda Item # 1

AGENDA REPORT SUMMARY

Meeting Date: July 9, 2019

Subject: An Education Session on Small Cell Nodes

Prepared by: Chris Jordan, City Manager

Attachment(s):

1. City of San Bruno Resolution 2019-61
2. City of Palo Alto Resolution 9825 and Ordinance 5465
3. City of Mill Valley Ordinance

Initiated by:

City Manager

Previous Council Consideration:

Not Applicable

Fiscal Impact:

Not Applicable

Environmental Review:

Not Applicable

Policy Question(s) for Council Consideration:

After understanding the new FCC Rulemaking on this topic, should the City consider approving new regulations to address small cell nodes?

Summary:

- The City of Los Altos has extensive regulations governing the placement of cell towers (LAMC 11.12, Personal Wireless Services and Facilities)
- In Fall 2018, the Federal Communications Commission (FCC) adopted a new rulemaking that limited the ability of local agencies to regulate small cell nodes
- The City has received at least one application from a communications provider to place a small cell node in Los Altos
- Staff is processing that application in accordance with our current regulations covering personal wireless, including the requirement that the applicant notify residents
- Other cities are beginning to adopt regulations covering the approval process for these facilities, including San Bruno and Palo Alto whose regulations are attached
- Gail Karish from the City Attorney's office will be in attendance to help educate the Council on the FCC prohibitions and the City's ability to regulate

Staff Recommendation:

Council should hear from the City Attorney's Office and provide direction to staff.

Reviewed By:

City Manager

CJ

City Attorney

CD

Finance Director

SE

RESOLUTION NO. 2019 - 61

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO ADOPTING DESIGN AND SITING GUIDELINES, ENGINEERING DESIGN STANDARDS, AND STANDARD CONDITIONS OF APPROVAL FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND WITHIN UTILITY EASEMENTS IN PUBLIC AND PRIVATE PROPERTIES

WHEREAS, it is in the public interest for the City to establish reasonable, uniform and comprehensive design and siting guidelines, engineering design standards, and conditions of approval for the installation of small wireless facilities in response to Federal and California State law and FCC Order 18-133 which permits wireless infrastructure deployment through relaxation of barriers, affecting the local permit process; and

WHEREAS, the design and siting guidelines, engineering design standards, and conditions of approval provide greater direction and assure a degree of consistency in the small wireless facility design and configuration; and

WHEREAS, the design and siting guidelines, engineering design standards, and conditions of approval would not increase impediments for the installation of small wireless facilities under Federal Telecommunications Act of 1996 but illustrate the desired level of design quality and configuration of any proposed small wireless facility; and

WHEREAS, the adoption of design and siting guidelines, engineering design standards, and conditions of approval by resolution will increase administrative efficiencies should future amendments to them become necessary; and

WHEREAS, Title 8 of the City's Municipal Code governs the permitting, installation, and regulation of obstructions within the City's public rights-of-way (ROW) and within utility easements in public and private properties; and

WHEREAS, the City's public rights-of-way and utility easements are a uniquely valuable public resource, closely linked with the City's character, making the regulation of small wireless facilities in the public rights-of-way and within utility easements in public and private properties necessary to protect and preserve the aesthetics of the community; and

WHEREAS, being authorized to do so, the City wishes to establish design and siting guidelines, engineering design standards and standard conditions of approval applicable to small wireless facilities in the public rights-of-way and within utility easements in public and private properties; and

WHEREAS, these guidelines and standards contained are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the City's local values, which include, without limitation, the aesthetic character of the City, its neighborhoods and community; and

WHEREAS, these guidelines and standards are also intended to reflect and promote the community interest by: (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the City's visual character from potential adverse impacts or visual blight created or exacerbated by small wireless facility infrastructure; (3) protecting and preserving the City's environmental resources; and (4) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors; and,

WHEREAS, on [Date] the City Council conducted a duly noticed public meeting and received testimony from City staff and all interested parties regarding the design and siting guidelines; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Bruno as follows:

INCORPORATION OF RECITALS. The recitals above are each incorporated by reference and adopted as findings of the City Council.

SECTION 1. DEFINITIONS. The definitions set forth in Section 8.36.020 of the Municipal Code are incorporated by reference into this Resolution.

SECTION 2. BACKGROUND AND PURPOSE. The City of San Bruno is establishing these *Design and Siting Guidelines and Engineering Design Standards* for small wireless facilities in the public right-of-way and within utility easements in public and private properties in order to regulate the design and placement of this infrastructure.

These *Design and Siting Guidelines* provide objective aesthetic design and siting requirements that all wireless facilities installed within the public right-of-way and utility easements in public and private properties must meet for approval by the City.

Only small wireless facilities as defined in 47 C.F.R. § 1.6002(l) (also referred to as "small cells") that meet the requirements of these guidelines are subject to these guidelines. Three different types of small wireless facilities are permitted in San Bruno within the public right-of-way and within utility easements in public and private properties. The types include (1) attachments to wooden (or other material) utility poles and utility lines, (2) placement on streetlights and traffic signal control poles, and (3) new freestanding poles. An overview of the guidelines that apply to each type of facility is presented in Section 4.

SECTION 4: Design Guidelines Applicable to all Small Wireless Facilities.

To ensure minimizing visual impacts, small wireless facilities should be placed as follows:

- a. Installations should conceal to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses with regard to appearance, size, and location.
- b. All equipment and antenna should be shrouded and where possible behind any street signs located on the pole.
- c. Only one small wireless facility is permitted per structure.
- d. Installations should be located on poles that are located outside of driveway and intersection sight lines. Where feasible, installations shall be located on poles that are located as close as feasible to shared property lines between two adjacent lots and not directly in front of residences and businesses.
- e. Equipment should be located entirely on the pole in a vertical arrangement. Exterior mounted accessory equipment should be within a single shroud not to exceed 9 cubic feet in volume (exclusive of the concealing elements like shrouding). Required meters and disconnect switches that are infeasible to be shrouded for safety and/or accessibility reasons are excluded from this shrouding recommendation.
- f. Ground-mounted equipment may be permitted in locations that do not obstruct pedestrian or vehicular traffic and within a reasonable distance from the pole. Ground-mounted equipment is not permitted if the approval authority finds that the above-ground equipment would unreasonably interfere with the public's ability to use the right-of-way for uses that include without limitation travel, social, expressive and/or aesthetic uses. The approval authority may condition approval based on new or enhanced landscaping to conceal ground-mounted equipment.
- g. All equipment (other than the antenna, antenna supports, ancillary wires, cables and any electric meter) should be installed underground in any area where the existing utilities are not primarily located above ground.
- h. All cables, wires and other connectors should be routed through conduits within poles whenever possible, and all external conduits, conduit attachments, cables, wires and other connectors must be concealed from public view.

- i. All wireless facilities must include signage that accurately identifies the equipment owner/operator, the site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under existing and future FCC or other United States governmental agencies for compliance with RF emissions regulations. RF notification signs should be placed where appropriate, and not at pedestrian eye level, unless required by the FCC or other regulatory agencies.
- j. Facilities should use PG&E Smart Meters or flat-rate billing. Ground-mounted electric meters are prohibited.
- k. Small wireless facilities shall not be located on decorative streetlights.
- l. Small wireless facilities should not be installed such that the facility damages existing trees. The approval authority may condition approval based on tree assessment results provided by a certified arborist. If pruning is required for the installation, a separate permit must be obtained from Community Services.
- m. Wireless facilities and all accessory equipment and transmission equipment must comply with all noise regulations and shall not exceed, either individually or cumulatively, the applicable ambient noise level standards in San Bruno Municipal Code Chapter 6.16 Noise Regulations.
- n. Pole heights shall be minimized, but in no case shall the maximum height of any facilities exceed 50 feet). Legally required lightning arresters and beacons shall be included when calculating the height of facilities. Pole height is measured from the top of foundation, which should be flushed with the ground, to the top of pole or top of antenna, whichever is greater.
- o. Wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. All wireless facilities shall be constructed from graffiti-resistant materials. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
- p. All wireless facilities shall not interfere with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure or any other public health or safety facility.
- q. No person shall install, use or maintain any facilities (in whole or in part) that rest upon, in or over any public right-of-way, when such installation, use or maintenance: (1) endangers or is reasonably likely to endanger the safety of persons or property, or (2) when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or (3) when such facilities unreasonably interfere with or unreasonably impede the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, ingress into or egress from any residence or place of business, use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture and/or other objects permitted at or near the location where the wireless facilities are located.

SECTION 5: Design Guidelines Applicable to Small Wireless Facilities on Wooden (or other material) Utility Poles and Utility Lines.

- a. All installations on utility poles and utility lines shall fully comply with the California Public Utilities Commission (CPUC) general orders (GOs), including, but not limited to, GO 95. None of the following design guidelines are meant to conflict with or cause a violation of GO 95, including, but not limited to, its guidelines for a safe installation on a utility pole. Accordingly, size limits can be adjusted at the Director's discretion to ensure compliance with CPUC rules on safety.

- b. All wireless facility equipment installed on poles should be completely contained within equipment shroud. Equipment shroud and lines should be painted, treated or finished to match existing utility pole and line aesthetics. Utility line installations should be colored to a non-reflective color.
- c. The top of the antenna if top mounted should be no higher than 48" above the minimum separation from supply lines required by GO 95, exclusive of the required antenna mounting bracket. The antenna should be shrouded.
- d. The extension of the antenna if side mounted should extend no more than 48" from the circumference of the pole.
- e. Only one equipment shroud, containing all required accessory equipment, should be installed per pole. Outer edge of equipment shroud should project no more than 18" off the pole circumference and measure no more than nine cubic feet in size.
- f. All antennas should be shrouded. Antenna shroud should have an outer diameter of 15" or less and measure no more than five cubic feet in size. The shroud should be no more than 4 feet tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
- g. Antenna shroud should be no more than 30 percent greater in diameter than the utility pole it is attached to, exclusive of the pole mounting device, and the transition between the pole and the shroud should be tapered where feasible.
- h. All cables, wires, and other connectors should be hidden within conduits that are painted, treated or finished to match existing utility pole aesthetics in finish and color.

SECTION 6: Design Guidelines Applicable to Small Wireless Facilities on Streetlights and Traffic Signal Control Poles.

- a. Equipment should be painted, treated or finished to match existing streetlight pole and traffic signal control pole aesthetics and materials in finish and color.
- b. The antenna should be mounted at the top of the streetlight pole or traffic signal control pole where the arm extends from the pole where feasible. The top of the antenna if top mounted should be no higher than 48" above the top of the existing pole.
- c. All antennas should be shrouded. Antenna shroud should have an outer diameter of 15" or less and measure no more than five cubic feet in size. The shroud should be no more than 4 feet tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
- d. Antenna shroud should be no more than 30 percent greater in diameter than the streetlight or traffic signal control pole it is attached to and the transition between the pole and the shroud should be tapered.
- e. All cables, wires, and other connectors should be hidden within the base and shaft of the streetlight or traffic signal control pole. Where this is not feasible, the equipment should be installed in an underground vault.

SECTION 7: Design Guidelines Applicable to Small Wireless Facilities on New Poles

- a. New poles are only permitted if: (a) the applicant demonstrates that above-ground support structures near the project site either do not exist or are not reasonably available to the applicant; or (b) the City specifically finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with the objectives of these Guidelines than installations on existing structures near the project site.

- b. New poles within open space areas should be designed to resemble trees. The species of tree design should be similar to those found within the vicinity of the open space.
- c. Poles not located within open space areas should be designed to resemble existing standalone streetlights in the vicinity.
- d. Poles should have a maximum diameter of 20 inches and should be tapered toward the top wherever possible.
- e. When technically feasible, all antennas and associated equipment shall fit within the diameter of the poles with no exterior wires or conduit. If all antennas and equipment cannot fit within the pole for technical reasons, then the installation shall be subject to the standards above.
- f. Pole material and finishes should match the existing materials of the City standard streetlight poles or match aesthetics and materials of existing decorative poles.
- g. Pole heights shall be minimized, but in no case should the maximum height of any facilities exceed 50 feet. Legally required lightning arresters and beacons should be included when calculating the height of facilities. Pole height is measured from the top of foundation, which should be flushed with the ground, to the top of antenna or top of highest pole attachment, whichever is greater.
- h. Antennas should be mounted on the top of the pole.
- i. Relocated poles may be subject to guidelines in this section and their respective pole type section.

SECTION 8: Siting Guidelines for Small Wireless Facilities

- a. Preferred Siting Locations. When evaluating compliance with this chapter, the approval authority will take into account whether any or more preferred locations are technically feasible and potentially available. All applicants for a small wireless facility permit must propose new wireless facilities in locations within the public rights-of-way or utility easements in public and private properties according to the following preferences, ordered from most preferred to least preferred:
 - (1) Industrial and Combining Industrial districts;
 - (2) Community Office or Administrative and Research districts;
 - (3) Planned Development districts with non-residential uses;
 - (4) Specific plan or transit-oriented development districts;
 - (5) Central Business districts;
 - (6) General Commercial, Neighborhood Commercial and Limited Commercial Combining districts;
 - (7) Open space and conservation districts;
 - (8) Planned Development districts with residential uses;
 - (9) Medium-density residential districts with multi-family (medium or high density) residential uses;
 - (10) Low-density residential districts with single-family or two-family residential uses.
- b. Preferred Support Structures. When evaluating compliance with this chapter, the approval authority will take into account whether any or more preferred support structures are technically feasible and potentially available. All applicants for small wireless facilities must propose new wireless facilities on support structures within the public rights-of-way according to the following preferences, ordered from most preferred to least preferred:
 - (1) New facilities on existing utility poles or support structures;
 - (2) New facilities on existing or replacement streetlights or new or replacement traffic signal control poles;
 - (3) New facilities on new standalone support structures.

- c. Facilities shall not be located in front of business windows, primary walkways, primary entrances or exits, or in such a way that it would impede a delivery to the building.
- d. Facilities should be located near shared property lines between two adjacent lots as much as possible or along a secondary rear property street frontage.
- e. Mid-block locations are preferred instead of at more visible corners and street intersections except if proposed on traffic signal control poles.
- f. New poles should be located in the parkway strip whenever possible and in alignment with existing trees, utility poles, and streetlights.
- g. New poles should be an approximately equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
- h. A small wireless facility should be no closer than 300 feet away, radially, from another small wireless facility.
- i. Arterial streets are more preferable to local streets for the placement of small wireless facilities.

SECTION 9: Engineering Design Standards Applicable to all Small Wireless Facilities

The following engineering design standards apply:

- a. Separation of service should be provided by installing all new electrical conduit(s) or utilizing existing empty conduit(s) with conduit owner's expressed consent in writing.
- b. Disconnect switch should be mounted on the pole. Bottom of disconnect switch should measure 10 feet above grade.
- c. All equipment, including the shroud, should be mounted to provide seven feet of clearance from the ground.
- d. For proposed facilities on streetlight or traffic signal control poles, a hand hole should be provided at the top of the pole to maintain fiber and electrical service for streetlights and future attachments.
- e. Pole foundation calculations should be prepared and stamped by a California professionally licensed structural engineer and should be provided to City for review. Pole foundation calculations should account for all new and existing pole attachments and the pole.
- f. Pole structural calculations, including seismic loads, showing the load impacts of the wireless facility on City streetlight and traffic signal control poles should be prepared and stamped by a California professionally licensed structural engineer and should be provided to City for review.
- g. Design wind velocity should be 115 mph minimum per TIA-222 rev G, IBC 2012 with ASC 710, and amendments for local conditions.
- h. For new freestanding poles, install eight 2-inch PVC (Schedule 40 or better) conduit sweeps to accommodate small wireless facilities (electrical and fiber) with up to four separate sweeps for future service.

SECTION 10: Conditions of Approval

Standard Conditions for Wireless Facility Permits Pursuant to San Bruno Municipal Code Chapter 8.36. In addition to all other conditions adopted by the approval authority, all wireless permits, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this section. The approval authority (or the appellate authority on appeal) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals and applicable provisions of San Bruno Municipal Code Chapter 8.36.

All wireless facilities, whether approved by the approval authority or deemed approved or deemed granted by law shall be automatically subject to the following standard conditions of approval:

1. **Permit Term.** This permit will automatically expire 10 years and one day from its issuance if a new permit has not been applied for in writing at least 120 days prior to permit expiration, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the City of San Bruno ("**City**") to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
2. **Compliance with Approved Plans.** Before the Public Works Department issues any encroachment permit and/or other ministerial permits required to commence construction in connection with this permit, the Permittee must incorporate this permit, all conditions associated with this permit and the approved photo simulations into the project plans (the "**Approved Plans**"). The Permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the Permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Public Works Director's ("**Director's**") prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
3. **Post-Installation Certification.** Within 60 calendar days after the Permittee commences full, unattended operations of a wireless facility approved or deemed-approved under San Bruno Municipal Code Chapter 8.36, the Permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in substantial compliance with the Approved Plans. Subject to the Director's discretion, such documentation may include, but shall not be limited to, as-built drawings, site surveys, GIS data and site photographs.
4. **Timing of Installation.** The installation and construction authorized by a wireless facility permit shall begin within one (1) year after its approval, or it will expire without further action by the City. The installation and construction authorized by a wireless facility permit shall conclude, including any necessary post-installation repairs and/or restoration to the right-of-way and/or public utility easement, within thirty (30) days following the day construction commenced.
5. **Maintenance Obligations; Vandalism.** The Permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this permit. The Permittee shall keep the site area free from all litter and debris at all times.

The Permittee shall remove and remediate any graffiti on the facility within 24 hours of being notified of its appearance. This condition also gives the City of San Bruno consent to have the graffiti painted out for the permittee. If the graffiti is not removed within 24 hours of being notified, the City's graffiti removal vendor will be instructed to remove the graffiti and provide a detailed accounting of the cost to the property owner, who will be responsible for reimbursing the City for the graffiti removal.

6. **Compliance with Laws.** The Permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("**Laws**") applicable to the Permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws

applicable to human exposure to radio frequency ("RF") emissions. The Permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the Permittee's obligations to maintain compliance with all Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the San Bruno Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or Permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the San Bruno Municipal Code, any permit, any permit condition or any applicable law or regulation.

7. **RF Exposure Compliance.** All facilities must comply with all standards and regulations of the Federal Communications Commission ("FCC") and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, Permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
8. **Adverse Impacts on Other Properties.** The Permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the Permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The Permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the San Bruno Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City. The Director or the Director's designee may issue a stop work order for any activities that violates this condition.
9. **Backup Power; Generators.** The Permittee shall operate backup power generators only during (a) commercial power outages or (b) for maintenance purposes during normal construction hours in accordance with the San Bruno Municipal Code. The Director may approve a temporary power source and/or generator in connection with initial construction, major repairs or in the event of an emergency. The Permittee shall not operate any permanent backup generators located in the public right-of-way or public utility easement.
10. **Inspections; Emergencies.** The Permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the Permittee, or at any time during an emergency. The City's officers, officials, staff or other designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The Permittee, if present, may observe the City's officers, officials, staff or other designee while any such inspection or emergency access occurs.
11. **Permittee's Contact Information.** The Permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The Permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that either the responsible person or such person's contact information changes.
12. **Indemnification.** The Permittee shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and

all claims, demands, law suits, writs and other actions or proceedings ("**Claims**") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (2) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the Permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this permit or the wireless facility. In the event the City becomes aware of any Claims, the City will use best efforts to promptly notify the Permittee and shall reasonably cooperate in the defense. The Permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or Permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The Permittee expressly acknowledges and agrees that the Permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this permit, and that such indemnification obligations will survive the expiration or revocation of this permit.

13. **Performance Bond.** Before the Public Works Department issues any encroachment permit and/or other ministerial permits required to commence construction in connection with this permit, the Permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code §65964(a), the Director shall take into consideration any information provided by the Permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.
14. **Recall to Approval Authority; Permit Revocation.** The approval authority may recall this permit for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this permit. At a duly noticed public hearing and in accordance with all applicable laws, the approval authority may revoke this permit or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.
15. **Record Retention.** The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the Permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee. The Permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the Permittee's electronic copies, and complete originals will control over all other copies in any form.
16. **Undergrounded Utilities.** In the event that other public utilities or cable television operators in the public right-of-way underground their facilities where the Permittee's wireless facility is located, the Permittee must underground its equipment except the antennas and antenna supports. Such undergrounding shall occur at the Permittee's sole cost and expense except as reimbursed pursuant to law.

17. **Electric Meter Removal.** In the event that the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the Permittee on its own initiative and at its sole cost and expense shall apply to the City for permission to remove the separate or ground-mounted electric meter and enclosure and restore the affected area to its original condition.
18. **Rearrangement and Relocation.** The Permittee acknowledges that the City, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the City (collectively, "**City Work**"). The City reserves the rights to do any and all City Work without any admission on its part that the City would not have such rights without the express reservation in this permit. In the event that the Director determines that any City Work will require the Permittee's facility to be rearranged and/or relocated, the Permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the Permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the Permittee's facility within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the Permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the Permittee's facility without prior notice to Permittee when the Director determines that the City Work is immediately necessary to protect public health or safety. The Permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs is provided. In addition, the Permittee shall indemnify, defend and hold the City, its agents, officers, officials, employees and volunteers harmless from and against any Claims in connection with rearranging or relocating the Permittee's facility, or turning on or off any water, oil, gas, electricity or other utility service in connection with the Permittee's facility.
19. **Damage to Public Property.** The Permittee shall promptly restore the surface or subsurface of the right-of-way or public property and/or repair or replace the surface, subsurface, and/or public improvement thereon, therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer for damage or disturbance caused by the wireless facilities. If Permittee does not repair the damage or disturbance as just described, then City shall have the option, upon fifteen (15) days prior written notice to Permittee, to perform or cause to be performed such reasonable and necessary work on behalf of Permittee and to charge Permittee for the actual and reasonable costs incurred by the City at City's standard rates.
- a. **Exception.** If the damage or disturbance caused by the wireless facilities present a public safety or hazardous concern as deemed by the City Manager, Fire Chief, police Chief, City Engineer, or Public Works Director or designee, the City reserves the right to make repairs immediately and to charge Permittee for all actual and reasonable costs incurred by the City. City shall have the right to disable, alter, relocate, sever, disrupt, remove, tear out, dig-up, or otherwise damage wireless facilities of Permittee. City shall inform Permittee of any actions taken and Permittee shall remove its equipment. Notwithstanding the above, before any such actions are taken, the City shall notify Permittee to give notice of the emergency or immediate hazard or dangerous condition.
- i. In the event of an action taken by City, neither the City nor any agent, Contractor, or employee of the City shall be liable to Permittee or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, Contractors, or employees in responding to such public hazard or dangerous condition. When practical and if possible, City will consult with Permittee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or the wireless

facilities involved. Following notice from the City, Permittee shall reasonably cooperate with the City, at no expense to City, to remedy the hazard and secure the route area.

- ii. In the event of an emergency discovered by the Permittee, Permittee shall notify the City immediately.

20. **Public Emergency Disruption.** In the event of a public emergency, the City will have the right to immediately perform, without prior written notice to Permittee, reasonable and necessary work on behalf of Permittee to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The City shall provide written notice to Permittee of the repairs as soon as practicable after the work has begun. Permittee agrees that any severed City-owned Conduit and/or fiber must be completely repaired or replaced to the nearest splice point. If the City needs to perform any part of the necessary repairs, relocation, and/or removal work, it shall be entitled to seek payment for such actual and reasonable repairs, relocation, and/or removal costs from Permittee and may draw upon a performance bond and/or Deposit in full or partial satisfaction of such costs, if payment is not made by Permittee. The Public Works Director or their designee shall have the authority to designate a public emergency, in addition to the provisions in Chapter 8.36 of the San Bruno Municipal Code.
21. **Pavement.** For any pavement cuts by Permittee, Permittee agrees to restore the pavement in as good a condition as or better than before to the satisfaction of the City Engineer and to reimburse the City for all actual and reasonable costs arising from the restoration. Additional conditions will be applied to permits where street excavations are proposed for roadways overlaid with asphalt concrete within the previous five years or for roadways that have received a seal coat within two years, up to and including repaving of half or full width of roadway. Facilities installation and repairs shall be planned well enough in advance to avoid excavating in newly resurfaced roadways.
22. **Landscaping.** The Permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the Permittee or at the Permittee's direction on or about the site. In the event that any trees are damaged or displaced, the Permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only ISA Certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). The box size and other standards for any replacement trees shall be subject to the Director's approval in consultation with the licensed arborist. The Permittee shall, at all times, be responsible to maintain any replacement landscape features.
23. **Demand for Payment.** Upon the receipt of a demand for payment by City, Permittee shall promptly reimburse City for actual and reasonable costs. Failure to pay will entitle the City to draw upon the performance bond and/or deposit within thirty (30) days of the demand for payment.
24. **Encroachment Permit General Conditions.** Encroachment Permits shall be obtained by the Permittee pursuant to San Bruno Municipal Code Chapter 8.16. The Permittee shall comply with the City of San Bruno's Encroachment Permit General and Special Conditions.
25. **Building Permit Requirement.** A building permit shall be obtained by the Permittee pursuant to San Bruno Municipal Code Title 11 for small wireless facilities within utility easements in public and private properties.
26. **Insurance Requirements.** Commercial general liability (or comprehensive) and property damage insurance indicating the City of San Bruno as an additional insured is required.

Coverage shall be at least as broad as:

- i. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per

occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

ii. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

iii. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the COL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation, which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance.

Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Contractor shall furnish the City With original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

27. **Public Noticing.** All residences and/or businesses impacted by project construction are to be notified in writing at least 48 hours in advance describing work schedule, including dates, time frames, and on-site project manager name and cell phone number prior to commencing work.
28. **Traffic Control.** Traffic control shall conform to the requirements of the most current edition of the California Manual on Uniform Traffic Control Devices published by Caltrans. Traffic control shall be in conformance with Caltrans' Standard Plans for Traffic Control.
29. **Traffic Control Plans ("TCPs").** Site-specific TCP's are required to be submitted for review a minimum of ten (10) business days prior to the scheduled start date. TCP's shall be signed by California licensed traffic engineer.
30. **Underground Service Alert (USA).** Forty-eight (48) hours before commencing work, the Permittee shall contact Underground Service Alert (USA) at 1-800-227-2600 to verify elevations and locations of all existing utilities
31. **Private Sewer Laterals and Water Services.** The City of San Bruno does not mark private sewer laterals or water services in the public right-of-way or public utility easement as part of the Underground Service Alert (USA) program. Permittee is to take precautions to locate and protect private sewer laterals and water services from damage during construction. In the event any sewer lateral damage is discovered, the Permittee is required to immediately dig and repair the sewer lateral to restore sewer service. In the event any water service damage is discovered, the Permittee shall immediately contact the City's Water Division at 650-616-7160 to coordinate the repair work. The Permittee shall reimburse the City for all costs and expenses in connection with damage repair work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs is provided. If new facilities are being installed by the boring method the Permittee is also required to video inspect any sewer and storm mains that are crossed by their facilities as part of this project, a copy of this video is to be provided to the City.
32. **Commencement of Operations.** The operation of the approved facility shall commence no later than one (1) month after the completion of installation, or the wireless facility permit will expire without further action by the City.
33. **Noninterference.** Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless facility permit, the Permittee shall provide the City with documentation establishing to the City's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or public utility easement to be affected by Permittee's facilities.
34. **No Right, Title, or Interest.** The permission granted by a wireless facility permit shall not in any event constitute an easement on or an encumbrance against the public right-of-way or public utility easement. No right, title, or interest (including franchise interest) in the public right-of-way or public utility easement, or any part thereof, shall vest or accrue in Permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

35. **No Possessory Interest.** No possessory interest is created by a wireless facility permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a wireless facility permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.
36. **Agreement with City.** If not already completed, Permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on Municipal Infrastructure. This permit is not a substitute for such agreement.
37. **Abandonment.** If a facility is not operated for a continuous period of 6 months, the wireless facility permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the 6 month period (i) the approval authority has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the Permittee has notified the approval authority of its intent to vacate the site, the Permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the approval authority. The Permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at Permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.
38. **Attorney's Fees.** In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

B. Standard Conditions for Section 6409 Approvals. In addition to the conditions provided in Section A of these Standard Conditions of Approval and any supplemental conditions imposed by the approval authority (or the appellate authority on appeal), as the case may be, all permits for Section 6409 Approvals granted pursuant to these Standards shall be subject to the following additional conditions, unless modified by the approving authority:

1. **Permit Subject to Conditions of Underlying Permit.** Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
2. **No Permit Term Extension.** The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

3. **No Waiver of Standing.** The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. Small Wireless Facilities Requests. In addition to the conditions provided in Section A of these Standard Conditions of Approval and any supplemental conditions imposed by the approval authority (or the appellate authority on appeal), as the case may be, all permits for a small wireless facility granted pursuant to these Standards shall be subject to the following condition, unless modified by the approval authority:

1. **No Waiver of Standing.** The City's grant of a permit for a small wireless facility request does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

SECTION 11: If any provision of this Resolution or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Resolution that can be given effect without the invalid provision or application, and to this extent, the provisions of this Resolution are severable. The City council declares that it would have adopted this Resolution irrespective of the invalidity of any portion thereof.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby adopts the design and siting guidelines and engineering design standards for small wireless facilities in the public right-of-way and within utility easements in public and private properties for the City of San Bruno.

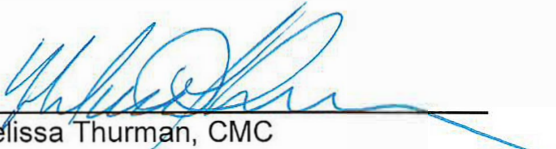
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I hereby certify that foregoing **Resolution No. 2019 - 61**
was introduced and adopted by the San Bruno City Council at a regular meeting on
June 11, 2019, by the following vote:

AYES: Councilmembers: M. Medina, O'Connell, Salazar, Mayor R. Medina

NOES: Councilmembers: None

ABSENT: Councilmembers: Davis



Melissa Thurman, CMC
City Clerk

Resolution No. 9825
Resolution of the Council of the City of Palo Alto Adopting
Objective Aesthetic, Noise, and Related Standards for
Wireless Communication Facilities in the Public Rights of Way

The Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. Findings and Declarations.

- a. The tremendous growth in personal wireless services has created an increased demand for new wireless antennas and equipment. Wireless service providers are increasingly seeking to utilize public rights of way to deploy small wireless facilities to improve and expand coverage.
- b. The unregulated installation of wireless facilities, including small cell antennas, in public rights-of-way and in other locations, poses a threat to the public health, safety and welfare, including: traffic and pedestrian safety hazards due to unsafe siting; negative and irreversible impacts to trees, landscaping, and infrastructure; noise concerns; and visual and aesthetic blight due to excessive height and lack of camouflaging, negatively impacting the unique character of the City.
- c. The reasonably regulated and orderly deployment of wireless telecommunications facilities in the public right-of-way is desirable, and unregulated or disorderly deployment represents a threat to the health, welfare and safety of the community.
- d. The regulations of wireless installations are necessary to protect and preserve the aesthetic character of the community and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible.
- e. The City Council has adopted a Wireless Communication Facilities (WCFs) code to regulate the various health, welfare, and safety impacts presented by the proliferation of WCFs and to balance these impacts with the interests of consumers in receiving the benefits of wireless technologies.
- f. Federal and state law place significant limits on the City's exercise of local control over WCF matters. On September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Third Report and Order (WT Docket No. 17-79; WC Docket No. 17-84; FCC 18-133), further limiting local control.
- g. The regulations adopted herein represent reasonable, objective, and non-discriminatory controls on aesthetic, noise, and related impacts of WCFs in the Public Rights-of-Way.

SECTION 2. Adoption of Objective Standards for WCFs on Streetlight Poles in the Public Rights-of-Way.

The City Council hereby adopts the standards in Exhibit 1, attached to and incorporated into this resolution as if fully set forth herein, for Wireless Communication Facilities on Streetlight in the Public Rights-of-Way.

SECTION 5. Environmental Review. The Council finds that this resolution is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15061 of the CEQA Guidelines, because it does not authorize the construction of Wireless Communication Facilities in any locations where such facilities are not already permitted; therefore it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. The resolution is further exempt under CEQA Guidelines sections 15301, 15302, 15303 and 15305 because it simply represents part of a comprehensive regulatory scheme governing minor alterations to existing facilities or small structures.

INTRODUCED AND PASSED: April 15, 2019

AYES: CORMACK, DUBOIS, FILSETH, FINE, KOU

NOES: KNISS

ABSENT: TANAKA

ABSTENTIONS:

ATTEST:

DocuSigned by:
Beth Minor
27529117DA004D7...

City Clerk

DocuSigned by:
Eric Filseth
64244717295F422...

Mayor

APPROVED AS TO FORM:

APPROVED:

DocuSigned by:
Albert Yang
15B6C45228134DC...

Deputy City Attorney

DocuSigned by:
Ed Swikada
F2DCA196668D4F9...

City Manager

DocuSigned by:
[Signature]
293CF922E1294F6...

Director of Planning and Community Environment

EXHIBIT 1

Streetlight Poles	
<p>Standard designs for WCFs located on Streetlights – An applicant proposing to attach to a Streetlight in the public right of way shall utilize one of the other designs specified herein.</p> <ul style="list-style-type: none"> a) Underground design: Radio equipment shall be placed in an underground vault in the pedestrian right of way. The antennae shall be placed in a shroud at the top of a nearby pole. <ul style="list-style-type: none"> i) Underground vaults shall be the minimum volume necessary to house WCF equipment. Application materials should explain why the proposed dimensions are required. In no event shall vault dimensions exceed 5 feet 8-inches x 8 feet 2-inches x 5 feet 7-inches or 260 cu. ft., excluding space required for ventilation or sump pump equipment. b) Top-mounted design: All equipment shall be enclosed within a shroud at the top of the pole containing both radio and antenna equipment. <ul style="list-style-type: none"> i) Top-mounted equipment shrouds shall not exceed 5.5 feet from the top of the streetlight pole and shall taper to meet the pole above the mast arm. The diameter of the antenna and shroud shall not exceed 15” at their widest. c) Minimal sunshield design: Radio equipment shall be enclosed within one or two sunshields not exceeding 8 inches wide nor 0.75 cubic feet in volume each, mounted directly to the side of the pole. Sunshields shall be attached at least 12 feet above ground level. To the extent separate antennae are required, antennae shall be placed in a shroud at the top of the pole. d) Existing signage: Radio equipment shall be attached to a pole behind existing signage under the following conditions: <ul style="list-style-type: none"> i) Radio equipment shall be placed within a shroud that does not exceed the dimensions of the sign in height and width, nor 4 inches in depth, including any required mounting bracket. ii) In no event shall WCF equipment obscure or interfere with the visibility or functioning of the signage. iii) To the extent separate antennae are required, antennae shall be placed in a shroud at the top of the pole. 	
<p>General standards for all WCFs located on Streetlights</p> <p>WCF equipment and shrouds</p> <ul style="list-style-type: none"> 1) Antennae shall be the smallest antennae possible to achieve the coverage objective. Except in the case of top-mounted designs, antennae shall not exceed 3 feet from the top of the streetlight pole and the associated “antenna skirt” shall taper to meet the pole above the mast arm. The diameter of the antenna and shroud shall not exceed 15” at their widest. 2) All shrouds and equipment shall be painted to match Public Works Department (PWD) standards or the existing pole, as applicable. 3) All shrouds and equipment shall be designed without gaps between materials or sky visible between component surfaces. 4) Equipment that cannot propagate an adequate signal within the shrouding required by the standard designs shall be attached to a streetlight pole at a height of 2 feet below the light mast or higher. Each instance of such equipment shall not exceed 0.85 cu. ft. nor shall the total volume of such equipment and any shrouding exceed 2.6 cu. ft. per streetlight pole. <p>Height</p> <ul style="list-style-type: none"> 5) Except for top-mounted designs, poles and all attachments will not exceed the height of similar surrounding poles by more than 3 feet. For top-mounted designs, poles and all attachments shall not exceed the height of similar surrounding poles by more than 6 feet. 6) Replacement poles will conform to PWD style guidelines where the City has adopted standards and will match the pole being replaced where no standards exist. For integrated 	

EXHIBIT 1

pole designs, poles shall incorporate decorative elements (e.g. fluting, decorative mast arm and luminaire, etc.) from PWD standards or existing poles, as applicable.

Landscaping

- 7) At the direction of the Urban Forestry division, Applicant shall provide street trees and/or smaller amenity trees that interrupt direct views of WCF equipment where Urban Forestry determines appropriate space exists within 35 feet of the pole.
- 8) Any existing landscaping removed or damaged by installation shall be replaced in kind.

Noise

- 9) Noise shall comply with PAMC Chapter 9.10 and shall be consistent with noise-related Comprehensive Plan goals and policies.
 - a) In residential areas with an average 24-hour noise level (L_{dn}) at or below 60 decibels (dB), noise generated by WCF equipment shall not cause the L_{dn} exceed 60dB or to increase by 5.0 dB or more, even if the resulting L_{dn} would remain below 60 dB.
 - b) In residential areas with an L_{dn} above 60 dB, noise generated by WCF equipment shall not cause the average to increase by 3.0 decibels (dB) or more.

Curb clearances

- 10) If placed below 16' above ground level, attachments shall not be placed closer than 18" to the curb, nor shall they extend over the sidewalk (Caltrans Highway Design Manual Section 309).
- 11) WCF node equipment must be at least 3' from a curb cut.

Miscellaneous

- 12) WCF installations shall not require any changes in the City's existing banner marketing program.
- 13) All cabling shall be routed entirely within the pole or an attached shroud.
- 14) Safety signage shall be the smallest size possible to accomplish its purpose.
- 15) Power disconnects shall be placed in a vault near the base of the pole.
- 16) Except as provided in these standards, no equipment cabinets may be placed at grade.
- 17) Light mast orientation, height, color temperature and other photometric information shall comply with PWD standards.

Pole location

- 18) Nodes shall utilize existing streetlight pole locations. Any new pole locations are prohibited unless approved through PWD/CPAU pole placement application.
- 19) Streetlight nodes at a designated gateway location or along a scenic corridor shall not utilize a top-mounted design.

EXHIBIT 2

Wood Utility Poles

Standard designs for WCFs located on Wood Utility Poles – An applicant proposing to attach to a wood utility pole in the public right of way shall utilize one of the other designs specified herein.

- a) **Underground design:** Radio equipment shall be placed in an underground vault in the pedestrian right of way. The antennae shall be placed in a shroud at the top of a nearby pole.
 - i) Underground vaults shall be the minimum volume necessary to house WCF equipment. Application materials should explain why the proposed dimensions are required. In no event shall vault dimensions exceed 5 feet 8-inches x 8 feet 2-inches x 5 feet 7-inches or 260 cu. ft., excluding space required for ventilation or sump pump equipment.
- b) **Top-mounted design:** All equipment shall be enclosed within a shroud at the top of the pole containing both radio and antenna equipment.
 - i) Top-mounted equipment shrouds shall not exceed 5.5 feet from the top of the pole or bayonet attachment, if one is used, and shall taper to meet the pole above the mast arm. The diameter of the antenna and shroud shall not exceed 15” at their widest.
- c) **Minimal sunshield design:** Radio equipment shall be enclosed within one or two sunshields not exceeding 8 inches wide nor 0.75 cubic feet in volume each, mounted directly to the side of the pole. To the extent separate antennae are required, antennae shall be placed in a shroud at the top of the pole.
- d) **Existing signage:** Radio equipment shall be attached to a pole behind existing signage under the following conditions:
 - i) Radio equipment shall be placed within a shroud that does not exceed the dimensions of the sign in height and width, nor 4 inches in depth, including any required mounting bracket.
 - ii) In no event shall WCF equipment obscure or interfere with the visibility or functioning of the signage.
 - iii) To the extent separate antennae are required, antennae shall be placed in a shroud at the top of the pole.

General standards for all WCFs located on Wood Utility Poles

WCF equipment and shrouds

- 1) Antennae shall be the smallest antennae possible to achieve the coverage objective. Antennae shall not exceed 5.5 feet from the top of the pole or bayonet attachment, if one is used. The diameter of the antenna and shroud shall not exceed 15” at their widest.
- 2) Bayonet attachments and equipment or antennae at the top of the shroud shall be covered by a single integrated shroud and “antenna skirt” that shall meet the pole without any gaps.
- 3) All conduit shall be mounted flush to the pole.
- 4) All shrouds and equipment shall be painted to match PWD standards or the existing pole, as applicable. Paint shall be maintained regularly and shrouds shall be repainted if necessary to match changes in pole color over time.
- 5) All shrouds and equipment shall be designed without gaps between materials or sky visible between component surfaces.
- 6) Equipment that cannot propagate an adequate signal within the shrouding required by the standard designs shall be attached to the top of the pole or on a cross arm or brace protruding from the pole to the minimum extent necessary to comply with safety standards including GO95. Such cross arm shall be placed as high on the pole as technically feasible. Each instance of such equipment shall not exceed 0.85 cu. ft. nor shall the total volume of such equipment exceed 2.6 cu. ft. per wood utility pole.

EXHIBIT 2

Height

- 7) For wood utility poles carrying power lines, replacement poles and pole-top bayonet attachments shall be the minimum height necessary to provide GO-95 mandated clearance between WCF equipment and power lines.
- 8) For wood utility poles without power lines, any pole top equipment shall not increase the height of the pole by more than six feet.
- 9) In no event shall the total height of a pole or replacement pole, including all equipment exceed 55 feet.
- 10) Replacement poles will conform to all standards adopted by CPAU.

Landscaping

- 11) At the direction of the Urban Forestry division, Applicant shall provide street trees and/or smaller amenity trees that interrupt direct views of WCF equipment where Urban Forestry determines appropriate space exists within 35 feet of the pole.
- 12) Any existing landscaping removed or damaged by installation shall be replaced in kind.

Noise

- 13) Noise shall comply with PAMC Chapter 9.10 and shall be consistent with noise-related Comprehensive Plan goals and policies.
 - a) In residential areas with an average 24-hour noise level (L_{dn}) at or below 60 decibels (dB), noise generated by WCF equipment shall not cause the L_{dn} exceed 60dB or to increase by 5.0 dB or more, even if the resulting L_{dn} would remain below 60 dB.
 - b) In residential areas with an L_{dn} above 60 dB, noise generated by WCF equipment shall not cause the average to increase by 3.0 decibels (dB) or more.

Curb clearances

- 14) If placed below 16' above ground level, attachments shall not be placed closer than 18" to the curb, nor shall they extend over the sidewalk (Caltrans Highway Design Manual Section 309).
- 15) WCF node equipment must be at least 3' from a curb cut.

Miscellaneous

- 16) Safety signage shall be the smallest size possible to accomplish its purpose.
- 17) Power disconnects shall be placed on the wood pole or in a vault near the base of the pole.
- 18) Except as provided in these standards, no equipment cabinets may be placed at grade.
- 19) If applicable, light mast orientation, height, color temperature and other photometric information shall comply with PWD standards.

Pole location

- 20) Nodes shall utilize existing wood utility pole locations. Any new pole locations are prohibited unless approved through PWD/CPAU pole placement application.
- 21) Wood utility poles at a designated gateway location or along a scenic corridor shall not utilize a top-mounted design.
- 22) WCF equipment and antennas shall be located on poles such that they do not fall within the horizontal plane defined by a 45 degree angle extending 50 feet from the center point of upper story windows, doors, balconies, and other openings.

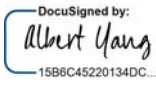
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Document Pages: 7	Signatures: 5
Certificate Pages: 2	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Kim Lunt
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	250 Hamilton Ave
	Palo Alto , CA 94301
	kimberly.lunt@cityofpaloalto.org
	IP Address: 12.220.157.20

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4/23/2019 11:01:17 AM	kimberly.lunt@cityofpaloalto.org	
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Signer Events

Signer Events	Signature	Timestamp
Albert Yang Albert.Yang@CityofPaloAlto.org Senior Deputy City Attorney City of Palo Alto Security Level: Email, Account Authentication (None)	 <p>DocuSigned by: Albert Yang 15B6C45220134DC...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 97.126.37.95</p>	<p>Sent: 4/23/2019 11:04:37 AM Viewed: 4/25/2019 9:02:20 AM Signed: 4/25/2019 9:02:43 AM</p>

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Jonathan Lait Jonathan.Lait@CityofPaloAlto.org Interim Director Planning and Community Environment City of Palo Alto Security Level: Email, Account Authentication (None)	 <p>DocuSigned by: Jonathan Lait 293CF322E1294F6...</p> <p>Signature Adoption: Uploaded Signature Image Using IP Address: 12.220.157.20</p>	<p>Sent: 4/25/2019 9:02:45 AM Viewed: 4/25/2019 5:52:16 PM Signed: 4/25/2019 5:53:15 PM</p>
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Ed Shikada ed.shikada@cityofpaloalto.org City Manager City of Palo Alto Security Level: Email, Account Authentication (None)	 <p>DocuSigned by: Ed Shikada F2DCA19CC8D4F9...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 174.214.35.42 Signed using mobile</p>	<p>Sent: 4/25/2019 5:53:17 PM Viewed: 4/25/2019 6:03:49 PM Signed: 4/25/2019 6:05:26 PM</p>
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Eric Filseth eric.filseth@cityofpaloalto.org Mayor Security Level: Email, Account Authentication (None)	 <p>DocuSigned by: Eric Filseth 64244717295F422...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 108.169.4.229</p>	<p>Sent: 4/25/2019 6:05:28 PM Viewed: 4/27/2019 5:55:03 PM Signed: 4/27/2019 5:55:12 PM</p>
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Beth Minor Beth.Minor@CityofPaloAlto.org City Clerk City of Palo Alto Security Level: Email, Account Authentication (None)	 <p>Signature Adoption: Pre-selected Style Using IP Address: 174.85.96.67 Signed using mobile</p>	Sent: 4/27/2019 5:55:14 PM Viewed: 4/27/2019 8:39:44 PM Signed: 4/27/2019 8:40:17 PM

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Signing Complete	Security Checked	4/27/2019 8:40:17 PM
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Ordinance No. 5465
Ordinance of the Council of the City of Palo Alto Amending
Section 18.42.110 (Wireless Communication Facilities) of Chapter 18.42
(Standards for Special Uses) of Title 18 (Zoning) of the Palo Alto Municipal
Code to Update the Code Consistent with the FCC's Declaratory Ruling and
Third Report and Order (FCC 18-133)

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

- A. The tremendous growth in personal wireless services has created an increased demand for new wireless antennas and equipment. Wireless service providers are increasingly seeking to utilize public rights of way to deploy small wireless facilities to improve and expand coverage.
- B. The unregulated installation of wireless facilities, including small cell antennas, in public rights-of-way and in other locations, poses a threat to the public health, safety and welfare, including: traffic and pedestrian safety hazards due to unsafe siting; negative and irreversible impacts to trees, landscaping, and infrastructure; noise concerns; and visual and aesthetic blight due to excessive height and lack of camouflaging, negatively impacting the unique character of the City.
- C. The reasonably regulated and orderly deployment of wireless telecommunications facilities in the public right-of-way is desirable, and unregulated or disorderly deployment represents a threat to the health, welfare and safety of the community.
- D. Local jurisdictions must reasonably allow wireless telecommunication facilities to be located in public rights-of-way, but may impose regulations based on published aesthetic standards.
- E. The regulations of wireless installations are necessary to protect and preserve the aesthetic character of the community and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible.
- F. The City Council has adopted a Wireless Communication Facilities (WCFs) code to regulate the various health, welfare, and safety impacts presented by the proliferation of WCFs and to balance these impacts with the interests of consumers in receiving the benefits of wireless technologies.
- G. Federal and state law place significant limits on the City's exercise of local control over WCF matters. On September 26, 2018, the Federal Communications Commission

adopted a Declaratory Ruling and Third Report and Order (WT Docket No. 17-79; WC Docket No. 17-84; FCC 18-133), further limiting local control.

- H. The purpose of the amendments herein is to establish uniform and comprehensive standards and regulations regarding the siting, development, and operation of wireless telecommunication facilities within the City in a manner consistent with State and Federal law.

SECTION 2. Section 18.42.110 of Chapter 18.42 is hereby amended to read as follows:

18.42.110 Wireless Communication Facilities

(a) Purpose and Interpretation

The purpose of this section is two-fold: (A) to implement within the jurisdictional boundaries of the city the applicable zoning, land use and other laws, rules, regulations and policies and procedures applicable to siting applications filed with the city by wireless communications facilities infrastructure owners and operators and wireless communications service providers, which seek to install or attach their facilities at locations in Palo Alto; and (B) to accommodate new wireless technologies and continued improvements to existing wireless communications facilities while minimizing their adverse visual and structural health and safety impacts. Consistent with that purpose, the provisions of this section are to be construed in a manner that is consistent with (1) the interest of consumers in receiving the benefits of the deployment of ultra-high-speed and -capacity broadband wireless communication facilities technology and innovations and the delivery of ultra-high-speed and -capacity broadband wireless communications facilities services, (2) the interest in safeguarding the environment, preserving historic properties, and addressing aesthetics and other local values, and (3) the interest in promoting the public health, safety and welfare in Palo Alto. Although this Section implements and references provisions of preemptive state and federal law, nothing in this Section shall be interpreted to create an independent source of the rights provided an applicant by such state or federal law.

A wireless communications facility is permitted to be sited in Palo Alto subject to applicable requirements imposed by this chapter, ~~which may include an architectural review process, a conditional use permit application process, or both.~~ These processes are intended to permit wireless communications facilities that blend with their existing surroundings and do not negatively impact the environment, historic properties, or public safety. The procedures prescribed by this ~~chapter~~ Section are tailored to the type of wireless communication facility that is sought. Building-mounted wireless communications facilities and collocation of facilities are preferred and encouraged, subject to all other provisions of this section.

(b) Definitions

The following abbreviations, phrases, terms and words shall have the meanings assigned in this section or, as appropriate, in Section 18.04.030 and Section 1.04.050 of the Palo Alto Municipal Code, as may be amended from time to time, unless the context indicates

otherwise. Words that are not defined in this section or other chapters or sections of the Palo Alto Municipal Code shall have the meanings as set forth in Chapter 6 of Title 47 of the United States Code, Part 1 of Title 47 of the Code of Federal Regulations, and, if not defined therein, their common and ordinary meaning.

(1) "**Antenna**" means a that part of a wireless communications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of personal wireless services, as defined in 42 U.S.C. § 332(c)(7)(C)(i). This definition does not include antennas designed for amateur or household use. wireless antenna and its associated equipment. The term includes a macrocell antenna and a microcell antenna.

(2) "**Associated equipment**" means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, shelters, radio transceivers, regular power supply units, and wiring, to which a wireless antenna is attached in order to facilitate mobile broadband service and personal wireless service delivered on mobile broadband devices.

(3) "**Base Station**" means the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

(i)a. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii)b. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks).

(iii)c. Any structure other than a tower that, at the time the relevant application is filed with the city under this section, supports or houses equipment described in paragraphs (i)-(ii) above and has been previously reviewed and approved by the city.

(4) "**Collocation**" means the same as defined in valid regulations promulgated by the FCC, including 47 C.F.R. §§ 1.6002(g) or 1.6100(b), as those sections may be amended from time to time. For the purpose of convenience only, the definition provided in 47 C.F.R. § 1.6100(b), for eligible facilities requests, is stated as follows: the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(5) "**Eligible Facilities Request**" means the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: any request for modification of an existing tower or base station that, within the meaning of the Spectrum Act, does not substantially change the

physical dimensions of that tower or base station, and involves (a) the collocation of new transmission equipment, (b) the removal of transmission equipment, or (c) the replacement of transmission equipment.

(6) **"Eligible Support Structure"** means the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: any existing tower or base station that exists at the time the application is filed with the city.

(7) **"Existing"** means the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: ~~for a constructed tower or base station, means that the tower or base station is existing for purposes of an eligible facilities request if~~ has been previously reviewed and approved under the applicable city zoning or siting process, or under another applicable state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is "Existing" for purposes of this definition.

(8) **"FCC"** means the Federal Communications Commission or successor agency.

(9) **"Project"** means a WCF to be located in Palo Alto for which a permit is required by the city.

(10) **"RF"** means radio frequency on the radio spectrum.

(11) **"Spectrum Act"** means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act of 2012, 47 U.S.C. § 1455(a) (providing, in part, "... a State or local government may not deny, and shall approve, any Eligible Facilities Request for a modification of any existing wireless Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station.").

(12) **"Small Wireless Facility,"** means the same as defined in any valid regulations adopted by the FCC. For purposes of convenience only, the definition provided at 47 C.F.R. Section 1.1312(e)(2) is stated here as follows: a facility that meets each of the following conditions:

a. The structure on which antenna facilities are mounted:

(I) Is 50 feet or less in height, or

(II) Is no more than 10 percent taller than other adjacent structures, or

(III) Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and

b. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and

c. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and

d. The facility does not require antenna structure registration under 47 C.F.R. Section 17; and

e. The facility is not located on Tribal lands, as defined under 36 C.F.R. § 800.16(x); and

f. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by the FCC.

(~~12~~13) "Substantially Changes" means the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: in the context of an eligible support structure, a modification of an existing tower or base station where any of the following criteria is met:

(i)a. For a tower not located in the public rights-of-way:

(~~a~~) The height of the tower is increased by (I) more than ten (10) percent, or (II) by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; or

(~~b~~) There is added an appurtenance to the body of the tower that would protrude from the edge of the tower by (I) more than twenty (20) feet, or (II) more than the width of the tower at the level of the appurtenance, whichever is greater.

(ii)b. For a tower located in the public rights-of-way and for all base stations:

(~~a~~) The height of the tower or base station is increased by more than ten (10) percent or ten (10) feet, whichever is greater; or

(~~b~~) There is added an appurtenance to the body of that structure that would protrude from the edge of that structure by more than six (6) feet; or

(~~c~~) It involves the installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure; or

(~~d~~) It involves the installation of any new equipment cabinets on the ground if there is no pre-existing ground cabinet associated with that structure.

~~(iii)~~c. For any eligible support structure:

~~(a)~~ It involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or

~~(b)~~ There is entailed in the proposed modification any excavation or deployment outside of the current site of the tower or base station; or

~~(c)~~ The proposed modification would cause the concealment/camouflage elements of the tower or base station to be defeated; or

~~(d)~~ The proposed modification would not comply with the conditions associated with the prior siting approval of construction or modification of the tower or base station, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding thresholds in this section.

~~(iv)~~d. To measure changes in height for the purposes of this section, the baseline is:

~~(a)~~ For deployments that are or will be separated horizontally, measured from the original support structure;

~~(b)~~ For all others, measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved by the city prior to February 22, 2012.

~~(v)~~e. To measure changes for the purposes of this section, the baseline is the dimensions that were approved by the city prior to February 22, 2012.

~~(13)~~14) "**Tower**" means any structure built for the sole or primary purpose of supporting any FCC-licensed or -authorized antenna, including any structure that is constructed for wireless communications service. This term does not include a base station.

~~(14)~~15) "**Transmission Equipment**" means the same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: equipment that facilitates transmission of any FCC-licensed or authorized wireless communication service.

(16) "**Wireless Communications Facility**" or "**WCF**" means any antenna, associated equipment, base station, ~~small cell system,~~ Small Wireless Facility, tower, and/or transmission equipment located in Palo Alto, but does not include :

a. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, or its successor regulation;

b. An antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or any successor regulation;

c. Portable radios and devices including, but not limited to, hand-held, vehicular, or other portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency services radio;

d. Mobile services providing public information coverage of news events of a temporary nature.

e. Telecommunications facilities owned and operated by any government agency or emergency medical care provider.

~~———— (16) "Wireless Communications Service" means, without limitation, all FCC-licensed back-haul and other fixed wireless services, broadcast, private, and public safety communication services, and unlicensed wireless services.~~

(c) Types of WCF Permits Required

(1) A Tier 1 WCF Permit shall be required for an eligible facilities request, as defined in this section.

(2) A Tier 2 WCF Permit shall be required for:

~~(i)~~a. Any modification of an eligible support structure, including the collocation of new equipment, that substantially changes the physical dimensions of the eligible support structure on which it is mounted; or

b. Any collocation of a Small Wireless Facility; or

~~(ii)~~c. Any other collocation not eligible for a Tier 1 WCF Permit.

(3) A Tier 3 WCF Permit shall be required for the siting of any WCF, including a Small Wireless Facility, that is not a collocation subject to a Tier 1 or 2 WCF Permit. An application shall not require a Tier 3 WCF Permit solely because it proposes the replacement in-place of an existing streetlight or wood utility pole.

(d) WCF Application Requirements

All applications for a WCF Permit shall include the following items:

(1) Any applicant for a WCF Permit shall participate in an intake meeting with the Planning and Community Environment Department ~~to file~~ when filing an application;

(2) The applicant must specify in writing whether the applicant believes the application is for an eligible facilities request subject to the Spectrum Act, and if so, provide a detailed written explanation as to why the applicant believes that the application qualifies as an eligible facilities request;

(3) The applicant shall complete the city's standard application form, as may be amended from time to time;

(4) The applicant shall include a completed and signed application checklist available from the city, including all information required by the application checklist;

(5) Payment of the fee prescribed by the Municipal Fee Schedule;

(6) The application must be accompanied by all permit applications with all required application materials for each separate permit required by the city for the proposed WCF, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable);

(7) For Tier 2 and 3 WCF Permits, the applicant must host a community meeting at a time and location designed to maximize attendance by persons receiving notice under this subparagraph to provide outreach to the neighborhood around the project site. The applicant shall give notice of the community meeting to all residents and property owners within 600 feet of the project site at least 14 days in advance of the community meeting. Applicants are encouraged to host the meeting before submitting an application. The Before an application may be approved, the applicant shall provide a proof of notice affidavit to the city that contains:

~~(i)a.~~ (i)a. Proof that the applicant noticed and hosted the community meeting no later than 15 days after filing the application ~~before filing the application~~;

~~(ii)b.~~ (ii)b. A summary of comments received at the community meeting and what, if any, changes were made to the application as a result of the meeting;

(8) For Tier 3 WCF Permits, the plans shall include a scaled depiction of the maximum ~~permitted~~ increase in the physical dimensions of the proposed project that would be feasible and permitted by the Spectrum Act, using the proposed project as a baseline; and

(9) Satisfy other such requirements as may be, from time to time, required by the Planning and Community Environment Department Director ("Director"), as publically stated in the application checklist.

(e) Permit Review ("Shot Clock") Time Periods. The City shall review and act upon application materials in a manner consistent with any timeframes provided in controlling state or federal law, including valid regulations and orders promulgated by the FCC.

~~(1) City review of application materials. The timeframe for review of an application shall begin to run when the application is submitted, but shall be tolled if the city finds the application incomplete and provides notice of incompleteness that delineates the~~

~~missing information in writing. Such requests shall be made within 30 days of submission of the application. After submission of additional information, the city will notify the applicant within 10 days of this submission if the additional information failed to complete the application. If the city makes a determination pursuant to Section 18.42.110(e)(2)(i) that an application submitted as a Tier 1 eligible facilities request should be processed as a Tier 2 or Tier 3, then the Tier 2 or Tier 3 processing time, as applicable, shall begin to run when the city issues this decision.~~

~~(2) Tier 1 processing time. For Tier 1 WCF Permit applications, the city will act on the WCF application, together with any other city permits required for a proposed WCF modification, within 60 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.~~

~~(i) If the city determines that the application does not qualify as a Tier 1 eligible facilities request, the city will notify the applicant of that determination in writing and will process the application as a Tier 2 or Tier 3 WCF Permit application, as applicable.~~

~~(ii) To the extent federal law provides a "deemed granted" remedy for Tier 1 WCF Permit applications not timely acted upon by the city, no such application shall be deemed granted until the applicant provides notice to the city, in writing, that the application has been deemed granted after the time period provided in Section (e)(2) above has expired.~~

~~(iii) Any Tier 1 WCF Permit application that the city grants or that is deemed granted by operation of federal law shall be subject to all requirements of Section 18.42.110(i)(3), (5), (6) and (7) and 18.42.110(j)(1), (2), (3), (4), (5) and (6).~~

~~(3) Tier 2 processing time. For Tier 2 WCF Permit applications, the city will act on the application within 90 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.~~

~~(4) Tier 3 processing time. For Tier 3 WCF Permit applications, the city will act on the application within 150 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.~~

~~(5) Denial of application. If the city denies a WCF application, the city will notify the applicant of the denial in writing of the reasons for the denial.~~

(f) Tier 1 WCF Permit Process and Findings

(1) A Tier 1 WCF Permit shall be reviewed by the Director. The Director's decision shall be final and shall not be appealable;

(2) The Director shall grant a Tier 1 WCF Permit provided that the Director finds that the applicant proposes an eligible facilities request;

(3) The Director shall impose the following conditions on the grant of a Tier 1 WCF Permit:

~~(i)a.~~ The proposed collocation or modification shall not defeat any existing concealment elements of the support structure; and

~~(ii)b.~~ The proposed WCF shall comply with the development standards in Section ~~18.42.110(i)(3), (5), (6) and (7),~~ and the conditions of approval in Section 18.42.110(j).

(g) Tier 2 WCF Permit Process and Findings

(1) A Tier 2 WCF Permit shall be reviewed by the Director, who may, in his or her sole discretion, refer an application to the Architectural Review Board. The Director's decision shall be appealable directly to the City Council. An appeal may be set for hearing before the City Council or may be placed on the Council's consent calendar, pursuant to the process for appeal of architectural review set forth in Section 18.77.070(f).

(2) The Director, or Council on appeal, shall grant a Tier 2 WCF Permit provided the proposed WCF complies with ~~the development standards in Section 18.42.110(i) and the conditions of approval in Section 18.42.110(j),~~ and all objective standards adopted and amended from time to time by resolution of the City Council or the development standards in Section 18.42.110(i). If such objective standards are repealed, an application shall not be granted unless, in addition to the other requirements of this section, ~~and all of the architectural review findings in Section 18.76.020(d) can be made.~~

(3) The Director, or Council on appeal, shall deny a Tier 2 WCF Permit if the above findings cannot be made.

(h) Tier 3 WCF Permit Process and Findings

(1) A Tier 3 WCF Permit shall be reviewed by the Director, who may, in his or her sole discretion, refer an application to the Architectural Review Board and/or Planning and Transportation Commission. The Director's decision shall be appealable directly to the City Council. An appeal may be set for hearing before the City Council or may be placed on the Council's consent calendar, pursuant to the process for appeal of architectural review set forth in Section 18.77.070(f).

(2) The Director or Council on appeal shall grant a Tier 3 WCF Permit provided the conditional use permit findings in Section 18.76.010(c) can be made and the proposed WCF complies with the development standards in Section 18.42.110(i) and the conditions of approval in Section 18.42.110(j), and all objective standards adopted and amended from time to time by resolution of the City Council or the development standards in Section 18.42.110(i), and all of the architectural review findings in Section 18.76.020(d) and the conditional use permit findings in Section 18.76.010(c) can be made. If the City Council repeals all objective standards, an application shall not be granted unless, in addition to the other requirements of this section, all of the architectural review findings in Section 18.76.020(d) can be made.

(3) The Director, or Council on appeal, shall deny a Tier 3 WCF Permit if the above findings cannot be made.

(i) Generally Applicable Development Standards

Unless the City Council has adopted more specific standards, and Eexcept as otherwise provided in this section, a proposed WCF Project shall comply with the following standards:

(1) Shall utilize the smallest footprint possible antennae, radio, and associated equipment, as measured by volume, technically feasible to achieve a network objective;

~~(2) Shall be designed to minimize the overall height, mass, and size of the cabinet and enclosure structure;~~

~~(3)~~ (2) Shall be screened from public view;

(4) When attached to an existing structure, shall be shrouded or screened using materials or colors found on existing structure ~~Shall be architecturally compatible with the existing site;~~

(5) Shall be placed at a location that would not require the removal of any required landscaping or would reduce the quantity of landscaping to a level of noncompliance with the Zoning Code;

~~(6)~~ (5) An antenna, base station, or tower ~~shall be designed to minimize its visibility from off-site locations and~~ shall be of a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area, such as the use of a monopine design;

~~(7) A building-mounted antenna, base station, or tower shall be architecturally compatible with the existing building on which the antenna, base station, or tower is attached;~~

~~(8)~~ (6) ~~For any Tier 2 or Tier 3 WCF proposed to~~ Shall not be attached on a historic structure/site, as designated by Chapter 16.49, ~~historic review shall also be required;~~

(9) Except as otherwise permitted by the Spectrum Act, a building-mounted WCF may extend no more than fifteen (15) feet beyond the permitted height of the building in the zone district;

~~(10)~~ (8) Except as otherwise permitted by the Spectrum Act, a tower or other stand-alone Tier 3 WCF Project shall not exceed beyond sixty-five (65) feet in height; and

~~(11)~~ (9) A tower or other stand-alone Tier 3 WCF may encroach into the interior/street side and rear setback.

(j) Conditions of Approval

In addition to any other conditions of approval permitted under federal and state law and this Code that the Director deems appropriate or required under this Code, all WCF Projects approved under this chapter, whether approved by the Director or deemed granted by operation of law, shall be subject to the following conditions of approval:

(1) Permit conditions. The grant or approval of a WCF Tier 1 Permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by the Spectrum Act.

(2) As-built plans. The applicant shall submit to the Director an as-built set of plans and photographs depicting the entire WCF as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.

(3) Applicant shall hire a radio engineer licensed by the State of California to measure the actual radio frequency emission of the WCF and determine if it meets FCC's standards. A report, certified by the engineer, of all calculations, required measurements, and the engineer's findings with respect to compliance with the FCC's radio frequency emission standards shall be submitted to the Planning Division within one year of commencement of operation.

(4) Indemnification. To the extent permitted by law, the applicant shall indemnify and hold harmless the city, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the city for its actual attorneys' fees and costs incurred in defense of the litigation. The city may, in its sole discretion and at Applicant's expense, elect to defend any such action with attorneys of its own choice.

(5) Compliance with applicable laws. The applicant shall comply with all applicable provisions of the Code, any permit issued under this Code, and all other applicable federal, state and local laws (including without limitation all building code, electrical code and other public safety requirements). Any failure by the City to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.

(6) Compliance with approved plans. The proposed Project shall be built in compliance with the approved plans on file with the Planning Division.

(7) Subject to City Uses. Any permit to install or utilize poles or conduit in the public rights of way is subject to the City's prior right to use, maintain, expand, replace or remove from use such facilities in the reasonable exercise of its governmental or proprietary powers. Such permit is further subject to the City's right to construction, maintain, and modify streets, sidewalks, and other improvements in the public rights of way. The City, in its sole discretion, may require removal or relocation of a permittee's equipment, at permittee's sole cost and expense, if necessary to accommodate a City use.

(8) Replacement. Where feasible, as new technology becomes available, the applicant shall place above-ground equipment below ground and replace equipment remaining above-ground with smaller equipment, as determined by volume. The applicant shall obtain all necessary permits and approvals for such replacement.

(9) Permit length. WCFs permits shall be valid for the time provided in Section 18.42.110(n), except that a permit shall automatically expire after twelve months from the date of approval if within such twelve month period, the applicant has not obtained all necessary permits to commence construction. The director may, without a hearing, extend such time for a maximum period of twelve additional months only, upon application filed with him or her before the expiration of the twelve-month limit.

(k) Exceptions

(1) The decision-making authority may grant exceptions to objective standards adopted by City Council resolution or any provision of this Section 18.42.110, upon finding that:

- a. The proposed WCF complies with the requirements of this Section 18.42.110 and any other requirements adopted by the City Council to the greatest extent feasible; and either
- b. As applied to a proposed WCF, the provision(s) from which exception is sought would deprive the applicant of rights guaranteed by federal law, state law, or both; or
- c. Denial of the application as proposed would violate federal law, state law, or both.

(2) An applicant must request an exception at the time an application is initially submitted for a WCF permit under this Section 18.42.110. The request must include both the specific provision(s) from which exception is sought and the basis of the request, including all supporting evidence on which the applicant relies. Any request for exception after the City has deemed an application complete constitutes a material change to the proposed WCF and shall be considered a new application.

(3) If the applicant seeks an exception from objective standards adopted by City Council resolution or generally applicable development standards, the Director may refer the application to the Architectural Review Board for recommendation on whether the application complies with such standards to the greatest extent feasible.

(4) The applicant shall have the burden of proving that federal law, state law, or both compel the decision-making authority to grant the requested exception(s), using the evidentiary standards applicable to the law at issue. The City shall have the right to hire independent consultants, at the applicant's expense, to evaluate the issues raised by the exception request and to submit rebuttal evidence where applicable.

(k) Removal of Abandoned Equipment

A WCF (Tier 1, Tier 2, or Tier 3) or a component of that WCF that ceases to be in use for more than ninety (90) days shall be removed by the applicant, wireless communications service provider, or property owner within ninety (90) days of the cessation of use of that WCF. A new

WCF permit shall not be issued to an owner or operator of a WCF or a wireless communications service provider until the abandoned WCF or its component is removed.

(m) Revocation

The Director may revoke any WCF Permit if the permit holder fails to comply with any condition of the permit. The Director's decision to revoke a Permit shall be appealable pursuant to the process applicable to issuance of the Permit, as provided in subdivisions (f), (g), and (h) of this section.

(n) Expiration

Except as otherwise provided in the permit or in a lease or license agreement with the City of Palo Alto, WCF permits shall be valid for a period of ten years from the date of approval. An applicant may seek extensions of an approved WCF permit in increments of no more than ten years and no sooner than twelve months prior to the expiration of the permit. The Director shall approve an extension request upon finding that that applicant has complied with all conditions of approval for the WCF permit and will comply with all other requirements applicable to WCFs at the time the extension is granted. Prior to issuing a decision on an extension request, the Director may seek additional studies and information to be prepared at the applicants expense.

SECTION 3. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. The Council finds that this ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15061 of the CEQA Guidelines, because it does not authorize the construction of Wireless Communication Facilities in any locations where such facilities are not already permitted; therefore it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. The ordinance is further exempt under CEQA Guidelines sections 15301, 15302, 15303 and 15305 because it simply provides a comprehensive permitting scheme governing minor alterations to existing facilities or small structures.

//

//

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//

//

SECTION 5. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED: April 15, 2019

PASSED: May 13, 2019

AYES: CORMACK, DUBOIS, FILSETH, FINE, KNISS, KOU, TANAKA

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

DocuSigned by:
Beth Minor
27523117DA804D7...
City Clerk

DocuSigned by:
Eric Filseth
84244717295F422...
Mayor

APPROVED AS TO FORM:

DocuSigned by:
Albert Yang
1586C45220134DC...
Deputy City Attorney

DocuSigned by:
Ed Swikada
F2BCA18CCC8D4F8...
City Manager

DocuSigned by:
[Signature]
293CF322E1294F6...
Director of Planning & Community Environment

Certificate Of Completion

Envelope Id: 6129ABCB7FF840C2A758E9383CA96B96	Status: Completed
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Source Envelope:	
Document Pages: 15	Signatures: 5
Certificate Pages: 2	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Kim Lunt
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	250 Hamilton Ave
	Palo Alto , CA 94301
	kimberly.lunt@cityofpaloalto.org
	IP Address: 12.220.157.20

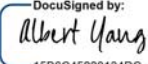
Record Tracking

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Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: City of Palo Alto	Location: DocuSign

Signer Events

Albert Yang
 Albert.Yang@CityofPaloAlto.org
 Senior Deputy City Attorney
 City of Palo Alto
 Security Level: Email, Account Authentication (None)

Signature

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Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Jonathan Lait
 Jonathan.Lait@CityofPaloAlto.org
 Interim Director Planning and Community Environment
 City of Palo Alto
 Security Level: Email, Account Authentication (None)

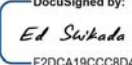
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Electronic Record and Signature Disclosure:
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Ed Shikada
 ed.shikada@cityofpaloalto.org
 City Manager
 City of Palo Alto
 Security Level: Email, Account Authentication (None)

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Electronic Record and Signature Disclosure:
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Eric Filseth
 eric.filseth@cityofpaloalto.org
 Mayor
 Security Level: Email, Account Authentication (None)

DocuSigned by:

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 Signature Adoption: Pre-selected Style
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Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Signer Events	Signature	Timestamp
Beth Minor Beth.Minor@CityofPaloAlto.org City Clerk City of Palo Alto Security Level: Email, Account Authentication (None)	 <p>Signature Adoption: Pre-selected Style Using IP Address: 12.220.157.20</p>	Sent: 6/4/2019 12:01:00 PM Viewed: 6/4/2019 12:04:17 PM Signed: 6/4/2019 12:04:39 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	6/4/2019 12:04:39 PM
Completed	Security Checked	6/4/2019 12:04:39 PM

Payment Events	Status	Timestamps
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CITY OF MILL VALLEY

ORDINANCE NO. 18-_____

**AN URGENCY ORDINANCE OF THE CITY OF MILL VALLEY AMENDING TITLE 20
("ZONING") OF THE MILL VALLEY MUNICIPAL CODE TO ADD CHAPTER 20.73
AND AMEND SECTIONS 11.16.100; 20.24.020; 20.26.020; 20.36.030; 20.40.030;
20.52.020; and 20.56.030 ESTABLISHING REGULATIONS FOR WIRELESS
TELECOMMUNICATION FACILITIES**

1 **WHEREAS,** This Ordinance is adopted as an urgency ordinance pursuant to Government
2 Code Section 36937(b). The facts constituting the urgency are as follows:

3
4 (1) The purpose of this Ordinance is to amend the City's Municipal Code to provide
5 uniform and comprehensive standards, regulations and permit requirements for the installation
6 of wireless telecommunications facilities in the City's public right-of-way.

7
8 (2) The wireless telecommunications industry has expressed interest in submitting
9 applications for the installation of "small cell" wireless telecommunications facilities in the
10 City's public rights-of-way of the City. Other California cities have already received applications
11 for small cells to be located within the public right-of-way.

12
13 (3) Installation of small cell and other wireless telecommunications facilities within
14 the public right-of-way can pose a threat to the public health, safety and welfare, including
15 disturbance to the right-of-way through the installation and maintenance of wireless facilities;
16 traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to
17 trees where proximity conflicts may require unnecessary trimming of branches or require
18 removal of roots due to related undergrounding of equipment or connection lines; land use
19 conflicts and incompatibilities including excessive height or poles and towers; creation of visual
20 and aesthetic blights and potential safety concerns arising from excessive size, heights, noise or
21 lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment
22 and power generators; and the creation of unnecessary visual and aesthetic blight by failing to
23 utilize alternative technologies or capitalizing on collocation opportunities which may
24 negatively impact the unique quality and character of the City.

25
26 (4) The City currently regulates wireless telecommunications facilities in the public
27 right-of-way through zoning and the encroachment permit process. The existing standards
28 have not been updated to reflect current telecommunications trends or necessary legal
29 requirements. Further the primary focus of the zoning regulations is wireless
30 telecommunications facilities located on private property, and the existing Code provisions
31 were not specifically designed to address the unique legal and practical issues that arise in
32 connection with wireless telecommunications facilities deployed in the public right-of-way.

33 (5) The Federal Telecommunications Act of 1996 preempts and declares invalid all
34 state rules that restrict entry or limit competition in both local and long-distance telephone
35 service.

36
37 (6) The California Public Utilities Commission (CPUC) is primarily responsible for the
38 implementation of local telephone competition and the CPUC issues certificates of public
39 convenience and necessity to new entrants that are qualified to provide competitive local
40 telephone exchange services and related telecommunications service, whether using their own
41 facilities or the facilities or services provided by other authorized telephone corporations.

42
43 (7) Section 234(a) of the California Public Utilities Code defines a “telephone
44 corporation” as “every corporation or person owning, controlling, operating, or managing any
45 telephone line for compensation within this state.”

46
47 (8) Section 616 of the California Public Utilities Code provides that a telephone
48 corporation “may condemn any property necessary for the construction and maintenance of its
49 telephone line.”

50
51 (9) Section 2902 of the California Public Utilities Code authorizes municipal
52 corporations to retain their powers of control to supervise and regulate the relationships
53 between a public utility and the general public in matters affecting the health, convenience,
54 and safety of the general public, including matters such as the use and repair of public streets
55 by any public utility and the location of the poles, wires, mains, or conduits of any public utility
56 on, under, or above any public streets.

57
58 (10) Section 7901 of the California Public Utilities Code authorizes telephone and
59 telegraph corporations to construct telephone or telegraph lines along and upon any public
60 road or highway, along or across any of the waters or lands within this state, and to erect poles,
61 posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of
62 their lines, in such manner and at such points as not to incommode the public use of the road
63 or highway or interrupt the navigation of the waters.

64
65 (11) Section 7901.1 of the California Public Utilities Code confirms the right of
66 municipalities to exercise reasonable control as to the time, place, and manner in which roads,
67 highways, and waterways are accessed, which control must be applied to all entities in an
68 equivalent manner, and may involve the imposition of fees.

69
70 (12) Section 50030 of the California Government Code provides that any permit fee
71 imposed by a city for the placement, installation, repair, or upgrading of telecommunications
72 facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all
73 required authorizations from the CPUC and the FCC to provide telecommunications services,
74 must not exceed the reasonable costs of providing the service for which the fee is charged, and
75 must not be levied for general revenue purposes.

76 (13) State and federal law have changed substantially since the City last adopted
77 regulations for wireless telecommunications facilities in the City. Such changes include
78 modifications to “shot clocks” whereby the City must approve or deny installations within a
79 certain period of time. State and federal laws require local governments to act on permit
80 applications for wireless facilities within a prescribed time period and may automatically deem
81 an application approved when a failure to act occurs. See 47 U.S.C. § 332(c)(7)(B)(iii); 47 C.F.R.
82 §§ 1.40001 et seq.; Cal. Gov’t Code § 65964.1. The Federal Communications Commission (FCC)
83 may require a decision on certain applications in as few as 60 days. See 47 C.F.R.
84 § 1.40001(c)(2); see also In the Matter of Acceleration of Broadband Deployment by Improving
85 Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd. 12865 (Oct. 17, 2014)
86 [hereinafter “2014 Report and Order”]; In the Matter of Petition for Declaratory Ruling to
87 Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review, Declaratory Ruling, 24
88 FCC Rcd. 13994 (Nov. 18, 2009) [hereinafter “2009 Declaratory Ruling”]. Pursuant to FCC
89 regulations, the City cannot adopt a moratorium ordinance to toll the time period for review for
90 certain type of facilities, even when needed to allow the City to maintain the status quo while it
91 reviews and revises its policies for compliance with changes in state or federal law. See 47
92 C.F.R. § 1.40001(c)(3); 2014 Report and Order, 29 FCC Rcd. at 219, 265. The City is in immediate
93 need of clear regulations for wireless installations in the public right-of-way given the number
94 of anticipated applications and legal timelines upon which the City must act.

95
96 (14) The public right-of-way in the City is a uniquely valuable public resource, closely
97 linked with the City’s natural beauty including the beach and coastline, and significant number
98 residential communities. The reasonably regulated and orderly deployment of wireless
99 telecommunications facilities in the public right-of-way is desirable, and unregulated or
100 disorderly deployment represents an ever-increasing and true threat to the health, welfare and
101 safety of the community.

102
103 (15) The regulations of wireless installations in the public right-of-way are necessary
104 to protect and preserve the aesthetics in the community, as well as the values of properties
105 within the City, and to ensure that all wireless telecommunications facilities are installed using
106 the least intrusive means possible.

107
108 (16) The City finds that in light of more recent developments in federal and state law
109 with respect to the regulation of small cell and other wireless telecommunications facilities,
110 there is a need for the City to update its current ordinances based on current
111 telecommunications trends, updates in laws, as well as aesthetic and location options for
112 wireless facilities. The City Council also finds that the lack of specifically-designed standards
113 and regulations in the Municipal Code for wireless facilities located in the public right-of-way,
114 the increasing requests for information about the City’s regulation of wireless
115 telecommunications facilities, the inability to adopt a temporary moratorium, and the potential
116 liabilities and negative consequences for noncompliance with state and federal regulations
117 (including, without limitation, automatic approvals) present current and immediate threat to
118 the public health, safety and welfare. The City Council further finds and declares that the

119 immediate implementation of the Ordinance is necessary to preserve and protect public health,
120 safety and welfare.

121

122 (17) The City recognizes its responsibilities under the Federal Telecommunications
123 Act of 1996 and state law, and believes that it is acting consistent with the current state of the
124 law in ensuring that irreversible development activity does not occur that would harm the
125 public health, safety, or welfare. The City does not intend that this Ordinance prohibit or have
126 the effect of prohibiting telecommunications service; rather, but includes appropriate
127 regulations to ensure that the installation, augmentation and relocation of wireless
128 telecommunications facilities in the public rights-of-way are conducted in such a manner as to
129 lawfully balance the legal rights of applicants under the Federal Telecommunications Act and
130 the California Public Utilities Code while, at the same time, protect to the full extent feasible
131 against the safety and land use concerns described herein.

132

133 Based on the foregoing, the City Council finds and determines that the immediate
134 preservation of the public health, safety and welfare requires that this Ordinance be enacted as
135 an urgency ordinance pursuant to Government Code Section 36937(b), and take effect
136 immediately upon adoption. Therefore, this Ordinance is necessary for the immediate
137 preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

138

139 **WHEREAS**, adoption of this Ordinance is consistent with the City's General Plan. The
140 City's General Plan provides goals and policies to preserve the high-quality design, small-town
141 character, aesthetics and environmental characteristics while also maintaining a strong,
142 healthy economy for its local business and assuring the health and safety of the predominantly
143 residential character of the community. Adoption of this Ordinance will provide uniform and
144 comprehensive regulations and standards for wireless telecommunications facilities in
145 furtherance of these goals and objectives while reducing the potentially negative impacts.

146

147 **NOW, THEREFORE**, the City of Mill Valley City Council does ordain as follows:

148

149 **Section 1.** The Mill Valley Municipal Code is hereby amended as follows:

150

151 **A.** A new Section 20.73, entitled "Wireless Telecommunications Facilities" is hereby
152 added to Title 18 of the Mill Valley Municipal Code to read as set forth in Exhibit A to this
153 Ordinance, which is hereby incorporated as though set forth in full herein.

154

155 **B.** Section 11.16.100 (Blanket Permits for Certain Applicants) is hereby amended to
156 include the following subsection:

157 "D. Notwithstanding Subsection A of this Section, no Wireless Telecommunications
158 Facility governed by Chapter 20.73 shall be installed or maintained pursuant to a blanket
159 permit."

160

161 C. Section 20.24.020 of Chapter 20.24 (Residential Multifamily (RM-3.5) District) is
162 hereby amended to include the following conditional use:

163 "N. Wireless Telecommunications Facilities as further outlined in 20.73."
164

165 D. Section 20.26.020 of Chapter 20.26 (Downtown Residential (DR) District) is
166 hereby amended to include the following conditional use as part of the proposed table:

167 "Wireless Telecommunications Facilities as further outlined in 20.73."
168

169 E. Section 20.36.030 of Chapter 20.36 (Limited Commercial (C-L) District) is hereby
170 amended to include the following conditional use:

171 "E. Wireless Telecommunications Facilities as further outlined in 20.73."
172

173 F. Section 20.40.030 of Chapter 20.40 (General Commercial (C-G) District) is hereby
174 amended to include the following conditional use:

175 "AA. Wireless Telecommunications Facilities as further outlined in 20.73."
176

177 G. Section 20.52.020 of Chapter 20.52 (Commercial Recreational (C-R) District) is
178 hereby amended to include the following conditional use:

179 "I. Wireless Telecommunications Facilities as further outlined in 20.73."
180

181 H. Section 20.56.030 of Chapter 20.56 (Open Area (O-A) District) is hereby amended
182 to include the following conditional use:

183 "H. Wireless Telecommunications Facilities as further outlined in 20.73."
184

185 **Section 2.** The City Council hereby finds that Adoption of this Ordinance will enact
186 only minor changes in land use regulations, and it can be seen with certainty that its adoption
187 will not have a significant effect on the environment because it will not allow for the
188 development of any new or expanded wireless telecommunication facilities anywhere other
189 than where they were previously allowed under existing federal, state and local regulations.
190 The wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section
191 15305, which exempts minor encroachment permits, and Section 15303, which exempts the
192 installation of small equipment and facilities in a small structure. The proposed Ordinance also
193 falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section
194 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility
195 that the activity in question may have a significant effect on the environment."
196

197 **Section 3.** **Severability.** If any section, subsection, sentence, clause, phrase, or word
198 of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the
199 decision of any court of competent jurisdiction, or preempted by legislative enactment, such
200 decision or legislation shall not affect the validity of the remaining portions of this Ordinance.
201 The City Council of the City of Mill Valley hereby declares that it would have adopted this
202 Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless

203 of the fact that any one or more sections, subsections, clauses, phrases, or word might
204 subsequently be declared invalid or unconstitutional or preempted by subsequent legislation.

205

206 **Section 4. Notice.** The City clerk shall certify to the passage and adoption of this
207 Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in
208 accordance with Section 36933 of the Government Code.

209

210 **Section 5. Effective Date.** This ordinance is adopted as an urgency ordinance for
211 the immediate preservation of the public peace, health and safety within the meaning of
212 Government Code Section 36937(b) and therefore shall be passed immediately upon its
213 introduction and shall become effective immediately, and shall be posted in three public places
214 in the City.

215

216 **INTRODUCED** at a regular meeting of the City Council of the City of Mill Valley on the
217 6th day of September, 2018, and

218

219 **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Mill Valley
220 on this 6th day of September, 2018, by the following vote:

221

222 **AYES:**

223 **NOES:**

224 **ABSENT:**

225

226 **ABSTAIN:**

227

228

229

230

Stephanie Moulton-Peters, Mayor

231

232 **ATTEST:**

233

234

235

236 _____
Kelsey Rogers, City Clerk

Exhibit A
URGENCY ORDINANCE

Chapter 20.73
WIRELESS TELECOMMUNICATIONS FACILITIES

1 **20.73.010 Purpose**

2 A. The purpose and intent of this chapter is to provide a uniform and comprehensive set of
3 regulations and standards for the permitting, development, siting, installation, design, operation
4 and maintenance of wireless telecommunications facilities in the City of Mill Valley. These
5 regulations are intended to prescribe clear and reasonable criteria to assess and process
6 applications in a consistent and expeditious manner, while reducing the impacts associated with
7 wireless telecommunications facilities. This chapter provides standards necessary to: (1) preserve
8 and promote harmonious land uses and the public right-of-way in the City; (2) promote and protect
9 public health and safety, community welfare, visual resources, and the aesthetic quality of the City
10 consistent with the goals, objectives and policies of the General Plan; (3) provide for the orderly,
11 managed, and efficient development of wireless telecommunications facilities in accordance with
12 the state and federal laws, rules, and regulations; and (4) encourage new and more efficient
13 technology in the provision of wireless telecommunications facilities.

14 B. This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or
15 effectively prohibit any personal wireless service provider's ability to provide personal wireless
16 services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate
17 telecommunications service, subject to any competitively neutral and nondiscriminatory rules or
18 regulation for rights-of-way management; (3) unreasonably discriminate among providers of
19 functionally equivalent services; (4) deny any request for authorization to place, construct or modify
20 personal wireless service facilities on the basis of environmental effects of radio frequency
21 emissions to the extent that such wireless facilities comply with the FCC's regulations concerning
22 such emissions; (5) prohibit any collocation or modification that the City may not deny under federal
23 or state law; or (6) otherwise authorize the City to preempt any applicable federal or state law.

24 **20.73.020 Definitions.** For the purposes of this chapter, the following defined terms shall have
25 the meaning set forth in this section unless the context clearly indicates or requires a different
26 meaning.

27 A. **“Accessory Equipment”** means any equipment associated with the installation of a wireless
28 telecommunications facility, including but not limited to cabling, generators, air conditioning units,
29 electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters,
30 vaults, splice boxes, and surface location markers.

31 B. **“Antenna”** means that part of a wireless telecommunications facility designed to radiate or
32 receive radio frequency signals or electromagnetic waves for the provision of services, including, but
33 not limited to, cellular, paging, personal communications services (PCS) and microwave

34 communications. Such devices include, but are not limited to, directional antennas, such as panel
35 antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points
36 (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast
37 antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or
38 household purposes.

39 C. **“Base Station”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be
40 amended, which defines that term as a structure or equipment at a fixed location that enables FCC-
41 licensed or authorized wireless communications between user equipment and a communications
42 network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any
43 equipment associated with a tower. The term includes, but is not limited to, equipment associated
44 with wireless communications services such as private, broadcast, and public safety services, as well
45 as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term
46 includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and
47 backup power supplies, and comparable equipment, regardless of technological configuration
48 (including distributed antenna systems and small-cell networks). The term includes any structure
49 other than a tower that, at the time the relevant application is filed with the State or local
50 government under this section, supports or houses equipment described in 47 C.F.R. §
51 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting
52 process, or under another State or local regulatory review process, even if the structure was not
53 built for the sole or primary purpose of providing such support. The term does not include any
54 structure that, at the time the relevant application is filed with the State or local government under
55 this section, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

56 D. **“Building-mounted”** means mounted to the side or façade, but not the roof, of a building or
57 another structure such as a water tank, pump station, church steeple, freestanding sign, or similar
58 structure.

59 E. **“Cellular”** means an analog or digital wireless telecommunications technology that is based
60 on a system of interconnected neighboring cell sites.

61 F. **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be
62 amended, which defines that term as the mounting or installation of transmission equipment on an
63 eligible support structure for the purpose of transmitting or receiving radio frequency signals for
64 communications purposes. As an illustration and not a limitation, the FCC's definition effectively
65 means "to add" and does not necessarily refer to more than one wireless telecommunication facility
66 installed at a single site.

67 G. **“Eligible Facilities Request”** means the same as defined by the FCC in 47 C.F.R. §
68 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an
69 existing tower or base station that does not substantially change the physical dimensions of such
70 tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of
71 transmission equipment; or (iii) replacement of transmission equipment.

- 72 H. **“Eligible Support Structure”** means the same as defined by the FCC in 47 C.F.R. §
73 1.40001(b)(4), as may be amended, which defines that term as any tower or base station as defined
74 in this section, provided that it is existing at the time the relevant application is filed with the State
75 or local government under this section.
- 76 I. **“Existing”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be
77 amended, which provides that a constructed tower or base station is existing for purposes of the
78 FCC's Section 6409(a) regulations if it has been reviewed and approved under the applicable zoning
79 or siting process, or under another State or local regulatory review process, provided that a tower
80 that has not been reviewed and approved because it was not in a zoned area when it was built, but
81 was lawfully constructed, is existing for purposes of this definition.
- 82 J. **“FCC”** means the Federal Communications Commission or its duly appointed successor
83 agency.
- 84 K. **“Modification”** means any change to an existing wireless telecommunications facility that
85 involves any of the following: collocation, expansion, modification, alteration, enlargement,
86 intensification, reduction, or augmentation, including, but not limited to, a change in size, shape,
87 color, visual design, or exterior material. Modification does not include repair, replacement, or
88 maintenance if those actions do not involve a change to the existing facility involving any of the
89 following: collocation, expansion, modification, alteration, enlargement, intensification, reduction,
90 or augmentation.
- 91 L. **“Monopole”** means a structure consisting of a single pole used to support antennas or
92 related equipment and includes a monopine, monoredwood, and similar monopoles camouflaged to
93 resemble trees or other objects.
- 94 M. **“Personal Wireless Services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as
95 may be amended, which defines the term as commercial mobile services, unlicensed wireless
96 services and common carrier wireless exchange access services.
- 97 N. **“Personal Wireless Service Facilities”** means the same as defined in 47 U.S.C. §
98 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal
99 wireless services.
- 100 O. **“Zoning administrator”** means the City zoning administrator or the City zoning
101 administrator’s designee.
- 102 P. **“Pole”** means a single shaft of wood, steel, concrete, or other material capable of supporting
103 the equipment mounted thereon in a safe and adequate manner and as required by provisions of
104 the Mill Valley Municipal Code.
- 105 Q. **“Public Right-of-Way or “Right-of-Way”** means any public street, public way, public alley or
106 public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof,
107 and additions thereto, under the jurisdiction of the City.

- 108 R. **“Reviewing Authority”** means the person or body who has the authority to review and
109 either grant or deny a wireless telecommunications facility permit pursuant to this chapter.
- 110 S. **“RF”** means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the
111 electromagnetic spectrum range.
- 112 T. **“Roof-mounted”** means mounted directly on the roof of any building or structure, above the
113 eave line of such building or structure.
- 114 U. **“Section 6409(a)”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act
115 of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as such law may be
116 amended from time to time.
- 117 V. **“Section 6409(a) Approval”** means the approval required by Section 6409(a).
- 118 W. **“Site”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be
119 amended, which provides that for towers other than towers in the public rights-of-way, the current
120 boundaries of the leased or owned property surrounding the tower and any access or utility
121 easements currently related to the site, and, for other eligible support structures, further restricted
122 to that area in proximity to the structure and to other transmission equipment already deployed on
123 the ground.
- 124 X. **“Substantial Change”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as
125 may be amended, which defines that term differently based on the particular wireless facility type
126 (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition
127 organizes the FCC’s criteria and thresholds for a substantial change according to the wireless facility
128 type and location.
- 129 1. For towers outside the public rights-of-way, a substantial change occurs when:
- 130 a) the proposed collocation or modification increases the overall height more than 10%
131 or the height of one additional antenna array not to exceed 20 feet (whichever is
132 greater); or
- 133 b) the proposed collocation or modification increases the width more than 20 feet from
134 the edge of the wireless tower or the width of the wireless tower at the level of the
135 appurtenance (whichever is greater); or
- 136 c) the proposed collocation or modification involves the installation of more than the
137 standard number of equipment cabinets for the technology involved, not to exceed
138 four; or
- 139 d) the proposed collocation or modification involves excavation outside the current
140 boundaries of the leased or owned property surrounding the wireless tower,
141 including any access or utility easements currently related to the site.

- 142 2. For towers in the public rights-of-way and for all base stations, a substantial change
143 occurs when:
- 144 a) the proposed collocation or modification increases the overall height more than 10%
145 or 10 feet (whichever is greater); or
- 146 b) the proposed collocation or modification increases the width more than 6 feet from
147 the edge of the wireless tower or base station; or
- 148 c) the proposed collocation or modification involves the installation of any new
149 equipment cabinets on the ground when there are no existing ground-mounted
150 equipment cabinets; or
- 151 d) the proposed collocation or modification involves the installation of any new ground-
152 mounted equipment cabinets that are ten percent (10%) larger in height or volume
153 than any existing ground-mounted equipment cabinets; or
- 154 e) the proposed collocation or modification involves excavation outside the area in
155 proximity to the structure and other transmission equipment already deployed on
156 the ground.
- 157 3. In addition, for all towers and base stations wherever located, a substantial change
158 occurs when:
- 159 a) the proposed collocation or modification would defeat the existing concealment
160 elements of the support structure as determined by the zoning administrator; or
- 161 b) the proposed collocation or modification violates a prior condition of approval,
162 provided however that the collocation need not comply with any prior condition of
163 approval related to height, width, equipment cabinets or excavation that is
164 inconsistent with the thresholds for a substantial change described in this section.

165 The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one
166 or more of the applicable thresholds means that a substantial change would occur. The thresholds
167 for height increases are cumulative limits. For sites with horizontally separated deployments, the
168 cumulative limit is measured from the originally-permitted support structure without regard to any
169 increases in size due to wireless equipment not included in the original design. For sites with
170 vertically separated deployments, the cumulative limit is measured from the permitted site
171 dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

172 Y. **“Telecommunications Tower”** or **“Tower”** means a freestanding mast, pole, monopole,
173 guyed tower, lattice tower, free standing tower or other structure designed and primarily used to
174 support wireless telecommunications facility antennas.

175 Z. **“Transmission Equipment”** means the same as defined by the FCC in 47 C.F.R. §
176 1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates

177 transmission for any FCC-licensed or authorized wireless communication service, including, but not
178 limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power
179 supply. The term includes equipment associated with wireless communications services including,
180 but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless
181 services and fixed wireless services such as microwave backhaul.

182 AA. **“Utility Pole”** means a pole or tower owned by any utility company that is primarily used to
183 support wires or cables necessary to the provision of electrical or other utility services regulated by
184 the California Public Utilities Commission.

185 BB. **“Wireless Services”** means any FCC-licensed or authorized wireless communication service
186 transmitted over frequencies in the electromagnetic spectrum.

187 CC. **“Wireless Telecommunications Facility”** means any facility constructed, installed, or
188 operated for wireless service. “Wireless telecommunications facility” includes, but is not limited to,
189 antennas or other types of equipment for the transmission or receipt of such signals,
190 telecommunications towers or similar structures supporting such equipment, related accessory
191 equipment, equipment buildings, parking areas, and other accessory development. “Wireless
192 telecommunications facility” does not mean any of the following:

- 193 1. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of
194 the Commission’s Rules, or its successor regulation.
- 195 2. An antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47
196 C.F.R. Section 1.4000, or any successor regulation, including, but not limited to, direct-to-
197 home satellite dishes that are less than one meter in diameter, TV antennas used to
198 receive television broadcast signals and wireless cable antennas.
- 199 3. Portable radios and devices including, but not limited to, hand-held, vehicular, or other
200 portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency
201 services radio, and other similar portable devices as determined by the zoning
202 administrator.
- 203 4. Telecommunications facilities owned and operated by any government agency.
- 204 5. Telecommunications facilities owned and operated by any emergency medical care
205 provider.
- 206 6. Mobile services providing public information coverage of news events of a temporary
207 nature.
- 208 7. Any wireless telecommunications facilities exempted from the Mill Valley Municipal Code
209 by federal law or state law.

210 **20.73.030 Applicability**

211 A. This chapter applies to all wireless telecommunications facilities as follows:

212 1. All facilities for which applications were not approved prior to the effective date of this
213 chapter shall be subject to and comply with all provisions of this chapter;

214 2. All facilities, notwithstanding the date approved, shall be subject immediately to the
215 provisions of this chapter governing the operation and maintenance, cessation of use
216 and abandonment, removal and restoration of wireless telecommunications facilities and
217 wireless telecommunications collocation facilities and the prohibition of dangerous
218 conditions or obstructions by such facilities; provided, however, that in the event a
219 condition of approval conflicts with a provision of this chapter, the condition of approval
220 shall control unless and until the permit is amended or revoked.

221 B. Title 20, including but not limited to this chapter 20.73 shall not apply to a wireless
222 telecommunications facility on property owned by the City.

223 C. Notwithstanding any provision of the Mill Valley Municipal Code to the contrary, provisions
224 governing the installation of a public utility facility or accessory equipment shall not apply to
225 wireless telecommunications facilities. This chapter 20.73 shall govern all applications for wireless
226 telecommunications facilities.

227 **20.73.040 Wireless Telecommunications Facility Permit Required**

228 A. **Conditional Use Permit required.** No wireless telecommunications facility shall be located
229 or modified within the City on any property, including the public right-of-way, without the issuance
230 of a permit as required by this chapter as set forth in the table below. Such permit shall be in
231 addition to any other permit required pursuant to the Mill Valley Municipal Code.

232

<i>Description Wireless Facility</i>	<i>Private Property</i>		<i>Public Right-of Way³</i>
	<i>RS, RSP, DR, MFR Zoning Districts</i>	<i>All Other Zoning Districts</i>	<i>All Zoning Districts</i>
Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Facility mounted on a replacement pole or new telecommunications tower	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
New wireless telecommunications collocation facility	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Eligible facilities request ¹ or application pursuant to California Government Code Section 65850.6 ²	Permitted	Permitted	Permitted
¹ See requirements of section 20.73.140. ² See requirements of section 20.73.150. ³ For any public right of way not within a zoning district, the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location.			

233

234 B. **Non-exclusive grant.** No approval granted under this chapter shall confer any exclusive
235 right, privilege, license, or franchise to occupy or use the public right-of-way of the City for delivery
236 of telecommunications services or any other purposes. Further, no approval shall be construed as
237 any warranty of title.

238 **20.73.050 Application for Permit**

239 A. **Application content.** All applications for a permit required by this chapter must be made in
240 writing on such form as the zoning administrator prescribes, which shall include the following
241 information, in addition to all other information determined necessary by the zoning administrator
242 as well as all other information required by the City as part of an application for a conditional use
243 permit:

- 244 1. Full name and contact information for the facility owner, facility operator, agent (if any),
245 and property owner, and related letter(s) of authorization.

- 246 2. The type of facility, including a full written description of the proposed facility, its
247 purpose and specifications.
- 248 3. A detailed site and engineering plan of the proposed facility containing the exact
249 proposed location of the facility, created by a qualified licensed engineer and in
250 accordance with requirements set by the zoning administrator.
- 251 4. Photographs of facility equipment and an accurate visual impact analysis with photo
252 simulations.
- 253 5. Completion of an RF exposure guidelines checklist, and proof of all applicable licenses or
254 other approvals required by the FCC.
- 255 6. If the application is for a facility that will be located within the public right-of-way, the
256 applicant shall certify that it is a telephone corporation or state the basis for its claimed
257 right to enter the right-of-way, and provide a copy of its certificate of public convenience
258 and necessity (CPCN), if a CPCN has been issued by the California Public Utilities
259 Commission.
- 260 7. A written description identifying the geographic service area for the subject installation,
261 accompanied by a plan and maps showing anticipated future installations and
262 modifications for the following two years.
- 263 8. A written report that analyzes acoustic levels for the proposed wireless
264 telecommunications facility and all associated equipment including without limitation all
265 environmental control units, sump pumps, temporary backup power generators, and
266 permanent backup power generators in order to demonstrate compliance with chapter
267 7.16 (Noise Control). The acoustic analysis must be prepared and certified by an engineer
268 and include an analysis of the manufacturers' specifications for all noise-emitting
269 equipment and a depiction of the proposed equipment relative to all adjacent property
270 lines. In lieu of a written report, the applicant may submit evidence from the equipment
271 manufacturer that the ambient noise emitted from all the proposed equipment will not,
272 both individually and cumulatively, exceed the applicable limits.
- 273 9. If the applicant claims it requires an exception to the requirements of this chapter, all
274 information and studies necessary for the City to evaluate that claim.
- 275 10. An application and processing fee and a deposit for a consultant review as set forth in
276 paragraph (B) of this section.
- 277 11. Any other studies or information determined necessary by the zoning administrator may
278 be required.
- 279

280 **B. Independent expert.**

281 1. The zoning administrator is authorized to retain on behalf of the City an independent,
282 qualified consultant to review any application for a permit for a wireless
283 telecommunications facility to review the technical aspects of the application, including
284 but not limited to the following matters:

- 285 (a) The accuracy, adequacy, and completeness of submissions,
- 286 (b) Compliance with applicable radio frequency emission standards,
- 287 (c) Whether any requested exception is necessary to close a significant gap in
288 coverage and is the least intrusive means of doing so,
- 289 (d) Technical demonstration of the unavailability of alternative sites, facility
290 designs or configurations, and coverage analysis, and
- 291 (e) The validity of conclusions reached or claims made by applicant.

292 2. The cost of this review shall be paid by the applicant through a deposit pursuant to an
293 adopted fee schedule resolution.

294 **20.73.060 Location and Configuration Preferences**

295 A. **Purpose.** The purpose of this section is to provide guidelines to applicants and the reviewing
296 authority regarding the preferred locations and configurations for wireless telecommunication
297 facilities in the City, provided that nothing in this section shall be construed to permit a wireless
298 telecommunication facility in any location or configuration that it is otherwise prohibited by this
299 chapter.

300 B. **Review of Location and Configuration.** The reviewing authority shall consider the extent to
301 which a proposed wireless telecommunication facility complies with these preferences and whether
302 there are feasible alternative locations or configurations to the proposed facility that are more
303 preferred under this section. If the location or configuration of a proposed facility qualifies for two
304 or more categories of preferred locations or configurations, it shall be deemed to belong to the least
305 preferred category.

306 C. **Order of Preference - Configurations.** The order of preference for the configuration for
307 wireless telecommunication facilities from most preferred to least preferred is:

- 308 1. Collocation with existing facilities,
- 309 2. Roof-mounted,
- 310 3. Building-mounted,

- 311 4. Mounted on an existing pole or utility pole
- 312 5. Mounted on a new pole or utility pole that will replace an existing pole or utility pole,
- 313 6. Mounted on a new telecommunication tower.
- 314 D. **Order of Preference - Location.** The order of preference for the location of wireless
315 telecommunications facilities from most preferred to least preferred is:
- 316 1. In the C-G zoning district,
- 317 2. In the C-N zoning district,
- 318 3. In the C-L zoning district,
- 319 4. In the C-D zoning district,
- 320 5. In the public right-of-way with the closest adjacent district being the C-G district,
- 321 6. In the public right-of-way with the closest adjacent district being the C-N district,
- 322 7. In the public right-of-way with the closest adjacent district being the C-L district,
- 323 8. In the public right-of-way with the closest adjacent district being the C-D district,
- 324 9. In the public right-of-way with the closest adjacent district being the RM district,
- 325 10. Any public right-of-way location that abuts the property line of a structure recognized as
326 a local, state or national historic landmark, historic district or on the register of historic
327 places,
- 328 E. **Accessory equipment.** In order of preference from most preferred to least preferred,
329 accessory equipment for wireless telecommunication facilities and wireless telecommunications
330 collocation facilities shall be located underground, within a building or structure, on a screened roof
331 top area or structure, or in a rear yard if not readily visible from surrounding properties and the
332 roadway, unless the reviewing authority finds that another location is preferable under the
333 circumstances of the application.
- 334 **20.73.070 Design and Development Standards for All Facilities**
- 335 A. **Basic requirements.** The design and development standards set forth in this section apply to
336 all wireless telecommunications facilities no matter where they are located. Wireless
337 telecommunications facilities shall be designed and maintained so as to minimize visual, noise, and
338 other impacts on the surrounding community and shall be planned, designed, located, and erected
339 in accordance with the design and development standards in this section.
- 340 B. **No speculative facilities.** A wireless telecommunications facility, wireless

341 telecommunications collocation facility, or a telecommunications tower, which is built on
342 speculation and for which there is no wireless tenant is prohibited within the City.

343 C. **General guidelines.** The applicant shall employ screening and camouflage design techniques
344 in the design and placement of wireless telecommunications facilities in order to ensure that the
345 facility is as visually inconspicuous as possible, to prevent the facility from dominating the
346 surrounding area and to hide the facility from predominant views from surrounding properties, all in
347 a manner that achieves compatibility with the community.

348 D. **Traffic safety.** All facilities shall be designed and located in such a manner as to avoid
349 adverse impacts on traffic safety.

350 E. **Antennas.** The applicant shall use the least visible antennas possible to accomplish the
351 coverage objectives. Antenna elements shall be flush mounted, to the extent reasonably
352 feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by
353 the same or other operators or carriers. Antennas shall be situated as to reduce visual impact
354 without compromising their function. Whip antennas need not be screened.

355 F. **Landscaping.** Where appropriate, facilities shall be installed so as to maintain and enhance
356 existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for
357 screening. Additional landscaping shall be planted, irrigated, and maintained where such vegetation
358 is deemed necessary by the City to provide screening or to block the line of sight between facilities
359 and adjacent uses.

360 G. **Signage.** Wireless telecommunications facilities and wireless telecommunications
361 collocation facilities shall not bear any signs or advertising devices other than certification, warning
362 or other signage required by law or permitted by the City.

363 H. **Lighting.** No wireless telecommunications facility may be illuminated unless either
364 specifically required by the Federal Aviation Administration or other government agency or in
365 association with the illumination of an athletic field on City or school property. Lightning arresters
366 and beacon lights are not permitted unless required by the Federal Aviation Administration or other
367 government agency. Legally required lightning arresters and beacons shall be included when
368 calculating the height of facilities such as telecommunications towers, lattice towers, and
369 monopoles.

370 I. **Noise.**

371 1. Each wireless telecommunications facility and wireless telecommunications collocation
372 facility shall be operated in such a manner so as to minimize any possible disruption
373 caused by noise.

374 2. Backup generators shall only be operated during periods of power outages, and shall not
375 be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m.

376 3. At no time shall equipment noise from any facility exceed an exterior noise level of 50
377 dBA at the facility's property line if the facility is located in a business or commercial zone
378 that permits those uses, provided, however, that for any such facility located within 500
379 feet of any property zoned residential or improved with a residential use, such
380 equipment noise shall at no time be audible at the property line of any such residential
381 property. For any facility located within a residential zone, such equipment noise shall at
382 no time be audible at the property line of any residentially improved or residential zoned
383 property.

384 4. Any equipment, including but not limited to air conditioning units, that may emit noise
385 that would be audible from beyond three feet from the facility in the case of a facility
386 located in the right-of-way, or in the case of other facilities the facility's property line,
387 shall be enclosed or equipped with noise attenuation devices to the extent necessary to
388 ensure compliance with applicable noise limitations under the Mill Valley Municipal
389 Code.

390 J. **Security.** Each wireless telecommunications facility and wireless telecommunications
391 collocation facility shall be designed to be resistant to, and minimize opportunities for, unauthorized
392 access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations,
393 visual blight, or attractive nuisances. The reviewing authority may require the provision of warning
394 signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and
395 vandalism when, because of their location or accessibility, a facility has the potential to become an
396 attractive nuisance.

397 K. **Modification.** At the time of modification of a wireless telecommunications facility, existing
398 equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise, and
399 other impacts, including, but not limited to, undergrounding the equipment and replacing larger,
400 more visually intrusive facilities with smaller, less visually intrusive facilities.

401 **20.73.080 Additional Design and Development Standards for Facilities Outside the Public Right-**
402 **of-Way**

403 A. **Basic Requirements.** Facilities located outside the public right-of-way are subject to the
404 design and development standards set forth in this section in addition to all design and
405 development standards that apply to all facilities.

406 B. **No parking interference.** In no event shall the installation of facilities replace or interfere
407 with parking spaces in such a way as to reduce the total number of parking spaces below the
408 number that is required.

409 C. **Roof-mounted facilities.** Roof-mounted facilities shall be designed and constructed to be
410 fully concealed or screened in a manner compatible with the existing architecture of the building the
411 facility is mounted to in color, texture, and type of material. Screening shall not increase the bulk of
412 the structure nor alter the character of the structure.

413 **D. Facilities mounted to a telecommunications tower.** Facilities mounted to a
414 telecommunications tower shall be located in close proximity to existing above-ground utilities, such
415 as electrical towers or utility poles (which are not scheduled for removal or under grounding for at
416 least 18 months after the date of application), light poles, trees of comparable heights, and in areas
417 where they will not detract from the appearance of the City.

418 1. Facilities mounted to a telecommunications tower, including, but not limited to, the
419 attached antennas, shall be designed to be the minimum functional height and width
420 required to adequately support the proposed facility and meet FCC requirements. The
421 applicant shall provide documentation satisfactory to the zoning administrator
422 establishing compliance with this paragraph. In any event, facilities mounted to a
423 telecommunications tower shall not exceed the applicable height limit for structures in
424 the applicable zoning district.

425 2. Aside from the antenna itself, no additional equipment may be visible. All cables,
426 including, but not limited to, electrical and utility cables, shall be run within the interior
427 of the telecommunications tower and shall be camouflaged or hidden to the fullest
428 extent feasible without jeopardizing the physical integrity of the tower.

429 3. Monopole installations shall be situated so as to utilize existing natural or man-made
430 features including topography, vegetation, buildings, or other structures to provide the
431 greatest amount of visual screening.

432 4. All antenna components and accessory wireless equipment shall be treated with exterior
433 coatings of a color and texture to match the predominant visual background or existing
434 architectural elements so as to visually blend in with the surrounding development.
435 Subdued colors and non-reflective materials that blend with surrounding materials and
436 colors shall be used.

437 5. Monopoles shall be no greater in diameter or other cross-sectional dimensions than is
438 necessary for the proper functioning of the facility.

439 6. If a faux tree is proposed for the monopole installation, it shall be of a type of tree
440 compatible with those existing in the immediate areas of the installation. If no trees
441 exist within the immediate areas, the applicant shall create a landscape setting that
442 integrates the faux tree with added species of a similar height and type. Additional
443 camouflage of the faux tree may be required depending on the type and design of faux
444 tree proposed.

445 **E. Accessory equipment.** All accessory equipment associated with the operation of any
446 wireless telecommunications facility shall be fully screened or camouflaged, and located in a
447 manner to minimize their visibility to the greatest extent possible utilizing the following methods for
448 the type of installation:

449 1. Accessory equipment for roof-mounted facilities shall be installed inside the building to
450 which it is mounted or underground, if feasible. If not feasible, such accessory
451 equipment may be located on the roof of the building that the facility is mounted on,
452 provided that both the equipment and screening materials are painted the color of the
453 building, roof, or surroundings. All screening materials for roof-mounted facilities shall be
454 of a quality and design that is architecturally integrated with the design of the building or
455 structure.

456 2. Accessory equipment for facilities mounted to a telecommunications tower shall be
457 visually screened by locating the equipment either within a nearby building, in an
458 underground vault (with the exception of required electrical panels) or in another type of
459 enclosed structure, which shall comply with the development and design standards of
460 the zoning district in which the accessory equipment is located. Such enclosed structure
461 shall be architecturally treated and adequately screened from view by landscape
462 plantings, decorative walls, fencing or other appropriate means, selected so that the
463 resulting screening will be visually integrated with the architecture and landscaping of
464 the surroundings.

465 **20.73.090 Additional Design and Development Standards for Facilities in the Public Right-of-**
466 **Way**

467 A. **Basic Requirements.** Facilities located in the public right-of-way are subject to the design
468 and development standards set forth in this section in addition to all design and development
469 standards that apply to all facilities.

470 B. **Right-of-way authority.** An encroachment permit must be obtained for any work in the
471 public right of way. Only applicants authorized to enter the public right-of-way pursuant to state or
472 federal law or a franchise or other agreement with the City shall be eligible for a permit to install or
473 modify a wireless telecommunications facility in the public right-of-way.

474 C. **Antennas.**

475 1. *Utility poles.* The maximum height of any antenna mounted to an existing utility pole
476 shall not exceed 24 inches above the height of an existing utility pole, nor shall any
477 portion of the antenna or equipment mounted on a pole be less than 18 feet above any
478 drivable road surface. All installations on utility poles shall fully comply with the
479 California Public Utilities Commission general orders, including, but not limited to,
480 General Order 95, as revised.

481 2. *Street light poles.* The maximum height of any antenna mounted to a street light pole
482 shall not exceed seven feet above the existing height of a street light pole in a location
483 with its closest adjacent district being a commercial zoning district and shall not exceed
484 three feet above the existing height of a street light pole in any other zoning district. Any
485 portion of the antenna or equipment mounted on such a pole shall be no less than 18
486 feet above any drivable road surface.

487 D. Poles.

488 1. Only pole-mounted antennas shall be permitted in the right-of-way. All other
489 telecommunications towers are prohibited, and no new poles are permitted that are not
490 replacing an existing pole.

491 2. Pole height and width limitations:

492 (a) All poles shall be designed to be the minimum functional height and width
493 required to support the proposed antenna installation and meet FCC
494 requirements. Poles and antennas and similar structures shall be no greater in
495 diameter or other cross-sectional dimensions than is necessary for the proper
496 functioning of the facility.

497 (b) Notwithstanding the above, no facility shall be located on a pole that is less
498 than 26 feet in height and no facility shall exceed 35 feet in height, including,
499 but not limited to the pole and any antenna that protrudes above the pole.

500 (c) Pole mounted equipment shall not exceed six cubic feet in dimension.

501 3. If an applicant proposes to replace a pole in order to accommodate the facility, the pole
502 shall match the appearance of the original pole to the extent feasible, unless another
503 design better accomplishes the objectives of this section. Such replacement pole shall
504 not exceed the height of the pole it is replacing by more than seven feet.

505 4. If an exception is granted for placement of new poles in the right-of-way, new poles shall
506 be designed to resemble existing poles in the right-of-way, including size, height, color,
507 materials and style, with the exception of any existing pole designs that are scheduled to
508 be removed and not replaced, unless another design better accomplishes the objectives
509 of this section. Such new poles that are not replacement poles shall be located no closer
510 than 90 feet to an existing pole.

511 E. **Space occupied.** Facilities shall be designed to occupy the least amount of space in the right-
512 of-way that is technically feasible.

513 F. Location.

514 1. Each component part of a facility shall be located so as not to cause any physical or visual
515 obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the
516 right-of-way, or safety hazards to pedestrians and motorists.

517 2. A facility shall not be located within any portion of the public right-of-way interfering
518 with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults,
519 valve housing structures, or any other vital public health and safety facility.

- 520 3. Facilities mounted to a telecommunications tower, above-ground accessory equipment,
521 or walls, fences, landscaping or other screening methods shall be setback a minimum of
522 18 inches from the front of a curb.
- 523 4. Each pole mounted wireless telecommunications facility must be separated by at least
524 1,500 feet.
- 525 5. All cables, including, but not limited to, electrical and utility cables, between the pole and
526 any accessory equipment shall be placed underground, if feasible.
- 527 6. All new wires needed to service the wireless telecommunications facility must be
528 installed within the width of the existing utility pole so as to not exceed the diameter and
529 height of the existing utility pole.

530 G. **Americans with Disabilities Act Compliance.** All facilities shall be built in compliance with
531 the Americans with Disabilities Act (ADA).

532 H. **Accessory equipment.** With the exception of the electric meter, which shall be pole-
533 mounted to the extent feasible, all accessory equipment shall be located underground to the extent
534 feasible. When above-ground is the only feasible location for a particular type of accessory
535 equipment and when such accessory equipment cannot be pole-mounted, such accessory
536 equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total
537 footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible,
538 including the use of landscaping or alternate screening. Required electrical meter cabinets shall be
539 adequately screened and camouflaged.

540 I. **Documentation.** The applicant shall provide documentation satisfactory to the zoning
541 administrator establishing compliance with this section 20.73.090.

542 **20.73.100 Conditions of Approval for All Facilities**

543 A. In addition to compliance with the requirements of this chapter, upon approval all facilities
544 shall be subject to each of the following conditions of approval, as well as any modification of these
545 conditions or additional conditions of approval deemed necessary by the reviewing authority:

- 546 1. Before the permittee submits any application for a building permit or other permits
547 required by the Mill Valley Municipal Code, the permittee must incorporate the wireless
548 telecommunication facility permit granted under this chapter, all conditions associated
549 with the wireless telecommunications facility permit and the approved plans and any
550 photo simulations (the "Approved Plans") into the project plans. The permittee must
551 construct, install and operate the wireless telecommunications facility in strict
552 compliance with the Approved Plans. The permittee shall submit an as built drawing
553 within 90 days after installation of the facility.
- 554 2. Where feasible, as new technology becomes available, the permittee shall:

- 555 (a) place above-ground wireless telecommunications facilities below ground,
556 including, but not limited to, accessory equipment that has been mounted to
557 a telecommunications tower or mounted on the ground; and
- 558 (b) replace larger, more visually intrusive facilities with smaller, less visually
559 intrusive facilities, after receiving all necessary permits and approvals required
560 pursuant to the Mill Valley Municipal Code.
- 561 3. The permittee shall submit and maintain current at all times basic contact and site
562 information on a form to be supplied by the City. The permittee shall notify the City of
563 any changes to the information submitted within seven days of any change, including
564 change of the name or legal status of the owner or operator. This information shall
565 include, but is not limited to, the following:
- 566 (a) Identity, including the name, address and 24-hour local or toll free contact
567 phone number of the permittee, the owner, the operator, and the agent or
568 person responsible for the maintenance of the facility.
- 569 (b) The legal status of the owner of the wireless telecommunications facility,
570 including official identification numbers and FCC certification.
- 571 (c) Name, address, and telephone number of the property owner if different than
572 the permittee.
- 573 4. The permittee shall not place any facilities that will deny access to, or otherwise interfere
574 with, any public utility, easement, or right-of-way located on the site. The permittee
575 shall allow the City reasonable access to, and maintenance of, all utilities and existing
576 public improvements within or adjacent to the site, including, but not limited to,
577 pavement, trees, public utilities, lighting and public signage.
- 578 5. At all times, all required notices and signs shall be posted on the site as required by the
579 FCC and California Public Utilities Commission, and as approved by the City. The location
580 and dimensions of a sign bearing the emergency contact name and telephone number
581 shall be posted pursuant to the approved plans.
- 582 6. At all times, the permittee shall ensure that the facility complies with the most current
583 regulatory and operational standards including, but not limited to, radio frequency
584 emissions standards adopted by the FCC and antenna height standards adopted by the
585 Federal Aviation Administration.
- 586 7. If the zoning administrator determines there is good cause to believe that the facility
587 may emit radio frequency emissions that are likely to exceed FCC standards, the zoning
588 administrator may require the permittee to submit a technically sufficient written report
589 certified by a qualified radio frequency emissions engineer, certifying that the facility is in
590 compliance with such FCC standards.

- 591 8. Permittee shall pay for and provide a performance bond, which shall be in effect until the
592 facilities are fully and completely removed and the site reasonably returned to its original
593 condition, to cover permittee's obligations under these conditions of approval and the
594 Mill Valley Municipal Code. The bond coverage shall include, but not be limited to,
595 removal of the facility, maintenance obligations and landscaping obligations. The
596 amount of the performance bond shall be set by the zoning administrator in an amount
597 rationally related to the obligations covered by the bond and shall be specified in the
598 conditions of approval.
- 599 9. Permittee shall defend, indemnify, protect and hold harmless the City, its elected and
600 appointed council members, boards, commissions, officers, officials, agents, consultants,
601 employees, and volunteers from and against any and all claims, actions, or proceeding
602 against the City and its elected and appointed council members, boards, commissions,
603 officers, officials, agents, consultants, employees and volunteers to attack, set aside, void
604 or annul, an approval of the City, Planning Commission or City council concerning this
605 permit and the project. Such indemnification shall include damages, judgments,
606 settlements, penalties, fines, defensive costs or expenses, including, but not limited to,
607 interest, attorneys' fees and expert witness fees, or liability of any kind related to or
608 arising from such claim, action, or proceeding. The City shall promptly notify the
609 permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit
610 City from participating in a defense of any claim, action or proceeding. The City shall have
611 the option of coordinating the defense, including, but not limited to, choosing counsel
612 for the defense at permittee's expense.
- 613 10. All conditions of approval shall be binding as to the applicant and all successors in
614 interest to permittee.
- 615 11. A condition setting forth the permit expiration date in accordance with section 20.73.200
616 shall be included in the conditions of approval.

617 **20.73.110 Additional Conditions of Approval for Facilities in the Public Right-of-Way**

- 618 A. In addition to compliance with the requirements of this chapter, upon approval all facilities
619 in the public right-of-way shall be subject to each of the conditions of approval set forth in section
620 20.73.100, each of the following conditions of approval, and any modification of these conditions or
621 additional conditions of approval deemed necessary by the reviewing authority:
- 622 1. The wireless telecommunications facility shall be subject to such conditions, changes or
623 limitations as are from time to time deemed necessary by the City engineer for the
624 purpose of: (a) protecting the public health, safety, and welfare, (b) preventing
625 interference with pedestrian and vehicular traffic, and (c) preventing damage to the
626 public right-of-way or any property adjacent to it. The City may modify the permit to
627 reflect such conditions, changes or limitations by following the same notice and public
628 hearing procedures as are applicable to the grant of a wireless telecommunications
629 facility permit for similarly located facilities, except the permittee shall be given notice by

630 personal service or by registered or certified mail at the last address provided to the City
631 by the permittee.

632 2. The permittee shall not move, alter, temporarily relocate, change, or interfere with any
633 existing structure, improvement or property without the prior consent of the owner of
634 that structure, improvement or property. No structure, improvement or property owned
635 by the City shall be moved to accommodate a wireless telecommunications facility unless
636 the City determines that such movement will not adversely affect the City or any
637 surrounding businesses or residents, and the permittee pays all costs and expenses
638 related to the relocation of the City's structure, improvement or property. Prior to
639 commencement of any work pursuant to an encroachment permit issued for any facility
640 within the public right-of-way, the permittee shall provide the City with documentation
641 establishing to the City's satisfaction that the permittee has the legal right to use or
642 interfere with any other structure, improvement or property within the public right-of-
643 way to be affected by applicant's facilities.

644 3. The permittee shall assume full liability for damage or injury caused to any property or
645 person by the facility.

646 4. The permittee shall repair, at its sole cost and expense, any damage including, but not
647 limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to
648 City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals,
649 improvements of any kind or nature, or utility lines and systems, underground utility line
650 and systems, or sewer systems and sewer lines that result from any activities performed
651 in connection with the installation or maintenance of a wireless telecommunications
652 facility in the public right-of-way. The permittee shall restore such areas, structures and
653 systems to the condition in which they existed prior to the installation or maintenance
654 that necessitated the repairs. In the event the permittee fails to complete such repair
655 within the number of days stated on a written notice by the zoning administrator, the
656 zoning administrator shall cause such repair to be completed at permittee's sole cost and
657 expense.

658 5. Prior to issuance of a building permit, the applicant shall obtain the zoning
659 administrator's approval of a tree protection plan prepared by a certified arborist if the
660 installation of the wireless telecommunication facility will be located within the canopy
661 of a street tree, or a protected tree on private property, or within a ten-foot radius of the
662 base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and
663 type of tree, etc.), a radius greater than ten feet may be required by the zoning
664 administrator.

665 6. Should any utility company offer electrical service that does not require the use of a
666 meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet
667 and any related foundation within 30 days of such service being offered and reasonably
668 restore the area to its prior condition.

- 669 7. The permittee shall modify, remove, or relocate its facility, or portion thereof, without
670 cost or expense to City, if and when made necessary by:
- 671 a) Any public improvement project, including, but not limited to, the construction,
672 maintenance, or operation of any underground or aboveground facilities including
673 but not limited to sewers, storm drains, conduits, gas, water, electric or other utility
674 systems, or pipes owned by City or any other public agency;
- 675 b) Any abandonment of any street, sidewalk, or other public facility;
- 676 c) Any change of grade, alignment or width of any street, sidewalk or other public
677 facility; or
- 678 d) A determination by the zoning administrator that the wireless telecommunications
679 facility has become incompatible with public health, safety or welfare or the public's
680 use of the public right-of-way.
- 681 8. Any modification, removal, or relocation of the facility shall be completed within 90 days
682 of written notification by City unless exigencies dictate a shorter period for removal or
683 relocation. Modification or relocation of the facility shall require submittal, review and
684 approval of a permit amendment pursuant to the Mill Valley Municipal Code. The
685 permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees
686 paid for the original permit or to a new permit, without additional fee, at a location as
687 close to the original location as the standards set forth in the Mill Valley Municipal Code
688 allow. In the event the facility is not modified, removed, or relocated within said period
689 of time, the City may cause the same to be done at the sole cost and expense of
690 permittee. Further, due to exigent circumstances as provided in the Mill Valley Municipal
691 Code, the City may modify, remove, or relocate wireless telecommunications facilities
692 without prior notice to permittee provided permittee is notified within a reasonable
693 period thereafter.

694 **20.73.120 Findings**

- 695 A. Where a wireless telecommunication facility requires a conditional use permit under this
696 chapter, the reviewing authority shall not approve any application unless, in addition to the findings
697 generally applicable to all conditional use permits, all of the following additional findings are made:
- 698 1. The proposed facility complies with all applicable provisions of this chapter.
- 699 2. The proposed facility has been designed and located to achieve compatibility with the
700 community to the maximum extent reasonably feasible.
- 701 3. The applicant has submitted a statement of its willingness to allow other carriers to
702 collocate on the proposed wireless telecommunications facility wherever technically and
703 economically feasible and where collocation would not harm community compatibility.

704 4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the
705 public health, safety, and welfare and will not exceed the standards set forth in this
706 chapter.

707 B. In addition to the findings in paragraph (A) above, approval of a wireless telecommunications
708 facility permit for a facility that will be located in the public right-of-way may be granted only if the
709 following findings are made by the reviewing authority:

710 1. The applicant has provided substantial written evidence supporting the applicant's claim
711 that it has the right to enter the public right-of-way pursuant to state or federal law, or
712 the applicant has entered into a franchise or other agreement with the City permitting
713 them to use the public right-of-way.

714 2. The applicant has demonstrated that the facility will not interfere with the use of the
715 public right-of-way, existing subterranean infrastructure, or the City's plans for
716 modification or use of such location and infrastructure.

717 **20.73.130 Exceptions**

718 A. Exceptions pertaining to any provision of this chapter, including, but not limited to,
719 exceptions from findings that would otherwise justify denial, may be granted by the reviewing
720 authority if the reviewing authority makes the finding that:

721 1. Denial of the facility as proposed would violate federal law, state law, or both; or

722 2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights
723 under federal law, state law, or both.

724 B. An applicant may only request an exception at the time of applying for a wireless
725 telecommunications facility permit. The request must include both the specific provision(s) of this
726 chapter from which the exception is sought and the basis of the request. Any request for an
727 exception after the City has deemed an application complete shall be treated as a new application.

728 C. Notwithstanding any other provision of this chapter, a conditional use permit shall be
729 required for a facility when an exception is requested.

730 D. The applicant shall have the burden of proving that denial of the facility as proposed would
731 violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant,
732 would deprive applicant of its rights under federal law, state law, or both, using the evidentiary
733 standards required by that law at issue. The City shall have the right to hire an independent
734 consultant, at the applicant's expense, to evaluate the issues raised by the exception request and
735 shall have the right to submit rebuttal evidence to refute the applicant's claim.

736 **20.73.140 Wireless Telecommunications Facilities Covered under Section 6409(a) of the Middle**
737 **Class Tax Relief and Job Creation Act of 2012**

738 A. **Purpose.** Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L.
739 112-96, codified in 47 U.S.C. § 1455(a), generally requires that State and local governments "may
740 not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an
741 existing tower or base station. Federal Communication Commission regulations interpret this
742 statute and create procedural rules for local review, which generally preempt certain subjective
743 land-use regulations, limit permit application content requirements and provide the applicant with a
744 potential "deemed granted" remedy when the State or local government fails to approve or deny
745 the request within sixty (60) days after submittal (accounting for any tolling periods). Moreover,
746 whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in 47 U.S.C. §
747 332, applies to only "personal wireless service facilities" (e.g., cellular telephone towers and
748 equipment), Section 6409(a) applies to all "wireless" facilities licensed or authorized by the FCC
749 (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

750 The overlap between wireless deployments covered under Section 6409(a) and other wireless
751 deployments, combined with the different substantive and procedural rules applicable to such
752 deployments, creates a potential for confusion that harms the public interest in both efficient
753 wireless facilities deployment and carefully planned community development in accordance with
754 local values. A separate permit application and review process specifically designed for compliance
755 with Section 6409(a) contained in a section devoted to Section 6409(a) will mitigate such potential
756 confusion, streamline local review and preserve the City's land-use authority to maximum extent
757 possible.

758 B. **Applicability.** This Section applies to all collocations or modifications to an existing wireless
759 tower or base station submitted with a written request for approval pursuant to Section 6409(a).

760 C. **Approval Required.** Any request to collocate, replace or remove transmission equipment at
761 an existing wireless tower or base station submitted with a written request for a 6409(a) approval
762 shall be subject to the zoning administrator's approval, conditional approval or denial without
763 prejudice pursuant to the standards and procedures contained in this chapter.

764 D. **Other Regulatory Approvals.** No collocation or modification approved under any section
765 6409(a) approval may occur unless the applicant also obtains all other applicable permits or
766 regulatory approvals from the City and state or federal agencies. Furthermore, any section 6409(a)
767 approval granted under this chapter shall remain subject to any and all lawful conditions or
768 requirements associated with such other permits or regulatory approvals from the City and state or
769 federal agencies.

770 E. **Application Requirement.** The City shall not approve any wireless facility subject to this
771 chapter except upon a duly filed application consistent with this Section and any other written rules
772 the City or the zoning administrator may establish from time to time. An application must include
773 the information required by Section 20.73.050 and the following additional information:

774 1. A title report prepared within the six months prior to the application filing date in order
775 for the City verify the property owner's identity. If the applicant does not own the subject
776 property, the application must include a written authorization signed by the property
777 owner that empowers the applicant to file the application and perform all wireless
778 facility construction, installation, operation and maintenance to the extent described in
779 the application.

780 2. A written statement that explains in plain factual detail whether and why Section 6409(a)
781 and the related FCC regulations at 47 C.F.R. § 1.40001 et seq. require approval for the
782 specific project. A complete written narrative analysis will state the applicable standard
783 and all the facts that allow the City to conclude the standard has been met. Bare
784 conclusions not factually supported do not constitute a complete written analysis. As
785 part of this written statement the applicant must also include (i) whether and why the
786 support structure qualifies as an existing tower or existing base station; and (ii) whether
787 and why the proposed collocation or modification does not cause a substantial change in
788 height, width, excavation, equipment cabinets, concealment or permit compliance.

789 F. **Procedures for a Duly Filed Application.** The City shall not review any application unless
790 duly filed in accordance with this Section, as follows:

791 1. *Pre-Submittal Conference.* Before application submittal, applicants must schedule and
792 attend a pre-application meeting with the zoning administrator for all proposed
793 modifications submitted for approval pursuant to Section 6409(a). The pre-submittal
794 conference is intended to streamline the review process through informal discussion that
795 includes, without limitation, the appropriate project classification, including whether the
796 project qualifies for Section 6409(a); any latent issues in connection with the existing
797 tower or base station; potential concealment issues (if applicable); coordination with
798 other City departments responsible for application review; and application completeness
799 issues. To mitigate unnecessary delays due to application incompleteness, applicants are
800 encouraged (but not required) to bring any draft applications or other materials so that
801 City staff may provide informal feedback about whether such applications or other
802 materials may be incomplete or unacceptable. The zoning administrator may, in the
803 zoning administrator's discretion, grant a written exemption to the submittal
804 appointment under Section 20.73.140(F)(2) or for a specific requirement for a complete
805 application to any applicant who (i) schedules, attends and fully participates in any pre-
806 submittal conference and (ii) shows to the zoning administrator's satisfaction that such
807 specific requirement duplicates information already provided in other materials to be
808 submitted or is otherwise unnecessary to the City's review under facts and circumstances
809 in that particular case. Any written exemption will be limited to the project discussed at
810 the pre-submittal conference and will not be extended to any other project.

811 2. *Submittal Appointment.* All applications must be filed with the City at a pre-scheduled
812 appointment. Applicants may generally submit one application per appointment, but
813 may schedule successive appointments for multiple applications whenever feasible and

814 not prejudicial to other applicants. Any application received without an appointment,
815 whether delivered in-person or through any other means, will not be considered duly
816 filed unless the applicant received a written exemption from the zoning administrator at
817 a pre-submittal conference.

818 3. *Appointment Scheduling Procedures.* For any event in the submittal process that requires
819 an appointment, applicants must submit a written request to the zoning administrator.
820 The zoning administrator shall endeavor to provide applicants with an appointment as
821 soon as reasonably feasible and within five business days after a written request is
822 received.

823 4. *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, an
824 application will be automatically deemed withdrawn by the applicant when the applicant
825 fails to tender a substantive response to the City within 90 calendar days after the City
826 deems the application incomplete in a written notice to the applicant. The zoning
827 administrator may, in the zoning administrator's discretion, grant a written extension for
828 up to an additional 30 calendar days when the applicant submits a written request prior
829 to the 90th day that shows good cause to grant the extension. Delays due to
830 circumstances outside the applicant's reasonable control will be considered good cause
831 to grant the extension.

832 5. *Departmental Forms, Rules and Other Regulations.* The City council authorizes the zoning
833 administrator to develop and publish permit application forms, checklists, informational
834 handouts and other related materials that the zoning administrator finds necessary,
835 appropriate or useful for processing requests for section 6409(a) approvals. Without
836 further authorization from the City council, the zoning administrator may from time-to-
837 time update and alter any such permit application forms, checklists, informational
838 handouts and other related materials as the zoning administrator deems necessary,
839 appropriate or useful to respond to regulatory, technological or other changes related to
840 this chapter. The City council authorizes the zoning administrator to establish other
841 reasonable rules and regulations, which may include without limitation regular hours for
842 appointments with applicants, as the zoning administrator deems necessary or
843 appropriate to organize, document and manage the application intake process.

844

845 G. **Administrative Review; Decision Notices.** The zoning administrator shall administratively
846 review an application for a section 6409(a) approval and act on such an application without prior
847 notice or a public hearing. Within five working days after the zoning administrator conditionally
848 approves or denies an application submitted for Section 6409(a) approval or before the FCC
849 timeframe for review expires (whichever occurs first), the zoning administrator shall send a written
850 notice to the applicant. In the event that the zoning administrator determines that an application
851 submitted for approval pursuant to Section 6409(a) does not qualify for approval, the zoning
852 administrator will send written notice to the applicant that includes the reasons to support the
853 review authority's decision and states that the application will be automatically denied without
854 prejudice on the 60th day after the date the application was filed unless the applicant withdraws the
855 application.

856 H. **Required Findings for 6409(a) Approval.** The zoning administrator may approve or
857 conditionally approve an application submitted for Section 6409(a) approval when the zoning
858 administrator finds that the proposed project:

859 1. Involves collocation, removal or replacement of transmission equipment on an existing
860 wireless tower or base station; and

861 2. Does not substantially change the physical dimensions of the existing wireless tower or
862 base station.

863 I. **Criteria for Denial Without Prejudice.** Notwithstanding any other provisions in this chapter,
864 and consistent with all applicable federal laws and regulations, the zoning administrator may deny
865 without prejudice an application submitted for approval pursuant to Section 6409(a) when it finds
866 that the proposed project:

867 1. Does not satisfy the criteria for approval;

868 2. Violates any legally enforceable standard or permit condition reasonably related to
869 public health and safety then in effect; or

870 3. Involves the replacement of the entire support structure.

871 J. **Conditional 6409(a) Approvals.** Subject to any applicable limitations in federal or state law,
872 nothing in this chapter is intended to limit the City's authority to conditionally approve an
873 application for a section 6409(a) approval to protect and promote the public health, safety and
874 welfare.

875 K. **Appeals.** Notwithstanding any provision of the Mill Valley Municipal Code to the contrary,
876 including but not limited to section , an applicant may appeal a decision by the zoning administrator
877 to deny without prejudice a Section 6409(a) application. The appeal must be filed within 10 days
878 from the zoning administrator's decision. The appeal must state in plain terms the grounds for
879 reversal and the facts that support those grounds. The City manager shall serve as the appellate
880 authority for all appeals of all actions of the zoning administrator taken pursuant to this section. The

881 City shall provide notice for an administrative hearing by the City manager. The City manager shall
882 limit its review to whether the project should be approved or denied in accordance with the
883 provisions in paragraphs (H) and (I) of this section. The decision of the City manager shall be final
884 and not subject to any further administrative appeals.

885 L. **Standard Conditions of Approval.** In addition to all other conditions adopted by the zoning
886 administrator, all Section 6409(a) approvals, whether approved by the zoning administrator or
887 deemed approved by the operation of law, shall be automatically subject to the following conditions
888 in this Section; provided, however, that the zoning administrator shall have discretion to modify or
889 amend these conditions on a case-by-case basis as may be necessary or appropriate under the
890 circumstances:

891 1. *Approved Plans.* Before the permittee submits any application for a building permit or
892 other permits required by the Mill Valley Municipal Code, the permittee must
893 incorporate the wireless telecommunications facility permit granted under this section,
894 all conditions associated with the wireless telecommunications facility permit and the
895 approved plans and any photo simulations (the "Approved Plans") into the project plans.
896 The permittee must construct, install and operate the wireless telecommunications
897 facility in strict compliance with the Approved Plans. The permittee shall submit an as
898 built drawing within 90 days after installation of the facility.

899 2. *Permit Term.* The City's grant or grant by operation of law of a Section 6409(a) approval
900 constitutes a federally-mandated modification to the underlying permit or other prior
901 regulatory authorization for the subject tower or base station. The City's grant or grant
902 by operation of law of a section 6409(a) approval will not extend the permit term, if any,
903 for any conditional use permit, or other underlying prior regulatory authorization.
904 Accordingly, the term for a section 6409(a) approval shall be coterminous with the
905 underlying permit or other prior regulatory authorization for the subject tower or base
906 station.

907 3. *Accelerated Permit Terms Due to Invalidation.* In the event that any court of competent
908 jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets
909 Section 6409(a) such that federal law would not mandate approval for any Section
910 6409(a) approval, such 6409(a) approvals shall automatically expire one year from the
911 effective date of the judicial order, unless the decision would not authorize accelerated
912 termination of previously approved section 6409(a) approvals or the zoning
913 administrator grants an extension upon written request from the permittee that shows
914 good cause for the extension, which includes without limitation extreme financial
915 hardship. Notwithstanding anything in the previous sentence to the contrary, the zoning
916 administrator may not grant a permanent exemption or indefinite extension. A permittee
917 shall not be required to remove its improvements approved under the invalidated
918 section 6409(a) approval when it has submitted an application for a conditional use
919 permit for those improvements before the one-year period ends.

- 920 4. *No Waiver of Standing.* The City's grant or grant by operation of law of a Section 6409(a)
921 approval does not waive, and shall not be construed to waive, any standing by the City to
922 challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any section
923 6409(a) approval.
- 924 5. *Build-out Period.* The section 6409(a) approval will automatically expire one year from
925 the issuance date unless the permittee obtains all other permits and approvals required
926 to install, construct and operate the approved wireless facility, which includes without
927 limitation any permits or approvals required by the any federal, state or local public
928 agencies with jurisdiction over the subject property, the wireless facility or its use. The
929 zoning administrator may grant one written extension to a date certain when the
930 permittee shows good cause to extend the limitations period in a written request for an
931 extension submitted at least 30 days prior to the automatic expiration date in this
932 condition. Any further extensions may be granted by the planning commission.
- 933 6. *Maintenance Obligations; Vandalism.* The permittee shall keep the site, which includes
934 without limitation any and all improvements, equipment, structures, access routes,
935 fences and landscape features, in a neat, clean and safe condition in accordance with the
936 Approved Plans and all conditions in this section 6409(a) approval. The permittee shall
937 keep the site area free from all litter and debris at all times. The permittee, at no cost to
938 the City, shall remove and remediate any graffiti or other vandalism at the site within 48
939 hours after the permittee receives notice or otherwise becomes aware that such graffiti
940 or other vandalism occurred.
- 941 7. *Compliance with Laws.* The permittee shall maintain compliance at all times with all
942 federal, state and local statutes, regulations, orders or other rules that carry the force of
943 law ("Laws") applicable to the permittee, the subject property, the wireless facility or any
944 use or activities in connection with the use authorized in this section 6409(a) approval.
945 The permittee expressly acknowledges and agrees that this obligation is intended to be
946 broadly construed and that no other specific requirements in these conditions are
947 intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain
948 compliance with all Laws.
- 949 8. *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts to
950 avoid any and all undue or unnecessary adverse impacts on nearby properties that may
951 arise from the permittee's construction, installation, operation, modification,
952 maintenance, repair, removal or other activities at the site. The permittee shall not
953 perform or cause others to perform any construction, installation, operation,
954 modification, maintenance, repair, removal or other work that involves heavy equipment
955 or machines on any day and at any time prohibited under the Mill Valley Municipal Code.
956 The restricted work hours in this condition will not prohibit any work required to prevent
957 an actual, immediate harm to property or persons, or any work during an emergency
958 declared by the City. The zoning administrator may issue a stop work order for any work
959 that violates this condition.

960 9. *Noise Complaints.* The permittee shall conduct all activities on the site in compliance with
961 the noise standards in the Mill Valley Municipal Code. In the event that any person files a
962 noise complaint and the City verifies that such complaint is valid, the permittee must
963 remedy the violation within 10 days after notice from the City, which may include a
964 demonstration that the permittee has amended its operational guidelines in situations
965 where the violation arises from the permittee's personnel rather than the permittee's
966 equipment.

967 10. *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that the City
968 or its designee may enter onto the site and inspect the improvements and equipment
969 upon reasonable prior notice to the permittee; provided, however, that the City or its
970 designee may, but will not be obligated to, enter onto the site area without prior notice
971 to support, repair, disable or remove any improvements or equipment in emergencies or
972 when such improvements or equipment threatens actual, imminent harm to property or
973 persons. The permittee will be permitted to supervise the City or its designee while such
974 inspection or emergency access occurs.

975 11. *Contact Information.* The permittee shall furnish the City with accurate and up-to-date
976 contact information for a person responsible for the wireless facility, which includes
977 without limitation such person's full name, title, direct telephone number, facsimile
978 number, mailing address and email address. The permittee shall keep such contact
979 information up-to-date at all times.

980 12. *Indemnification.* The permittee and, if applicable, the property owner upon which the
981 wireless facility is installed shall defend, indemnify and hold harmless the City, its agents,
982 officers, officials, employees and volunteers from any and all (1) damages, liabilities,
983 injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs
984 and other actions or proceedings ("Claims") brought against the City or its agents,
985 officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside,
986 void or annul the City's approval of this section 6409(a) approval, and (2) other Claims
987 any kind or form, whether for personal injury, death or property damage, that arise from
988 or in connection with the permittee's or its agents', directors', officers', employees',
989 contractors', subcontractors', licensees', or customers' acts or omissions in connection
990 with this section 6409(a) approval or the wireless facility. In the event the City becomes
991 aware any Claims, the City will use best efforts to promptly notify the permittee and the
992 private property owner and shall reasonably cooperate in the defense. The permittee
993 expressly acknowledges and agrees that the City shall have the right to approve, which
994 approval shall not be unreasonably withheld, the legal counsel providing the City's
995 defense, and the property owner or permittee (as applicable) shall promptly reimburse
996 City for any costs and expenses directly and necessarily incurred by the City in the course
997 of the defense. The permittee expressly acknowledges and agrees that the permittee's
998 indemnification obligations under this condition are a material consideration that
999 motivates the City to approve this section 6409(a) approval, and that such

1000 indemnification obligations will survive the expiration or revocation of this section
1001 6409(a) approval.

1002 13. *Performance Bond.* Before the City issues any construction permit in connection with the
1003 wireless facility, the permittee shall post a performance bond from a surety and in a form
1004 acceptable to the City manager in an amount equal to or greater than a written estimate
1005 from a qualified contractor with experience in wireless facilities removal. The written
1006 estimate must include the cost to remove all equipment and other improvements, which
1007 includes without limitation all antennas, radios, batteries, generators, utilities, cabinets,
1008 mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles,
1009 footings and foundations, whether above ground or below ground, constructed or
1010 installed in connection with the wireless facility. In establishing or adjusting the bond
1011 amount required under this condition, and in accordance with California Government
1012 Code § 65964(a), the City manager shall take into consideration information provided by
1013 the permittee regarding the cost to remove the wireless facility.

1014 14. *Record Retention.* The permittee must maintain complete and accurate copies of all
1015 permits and other regulatory approvals issued in connection with the wireless facility,
1016 which includes without limitation this approval, the approved plans and photo
1017 simulations incorporated into this approval, all conditions associated with this approval
1018 and any ministerial permits or approvals issued in connection with this approval. In the
1019 event that the permittee does not maintain such records as required in this condition,
1020 any ambiguities or uncertainties that would be resolved through an inspection of the
1021 missing records will be construed against the permittee.

1022 15. *Compliance Obligations.* An applicant or permittee will not be relieved of its obligation
1023 to comply with every applicable provision in the Mill Valley Municipal Code, any permit,
1024 any permit condition or any applicable law or regulation by reason of any failure by the
1025 City to timely notice, prompt or enforce compliance by the applicant or permittee.

1026 **20.73.150 Wireless Telecommunications Collocation Facilities Covered under California**
1027 **Government Code Section 65850.6**

1028 A. **Purpose.** The purpose of this section is to comply with an application for a Wireless
1029 Telecommunications Collocation Facility under California Government Code Section 65850.6, for
1030 which a 6509(a) approval is not being requested. This section provides the requirements, standards
1031 and regulations for a wireless telecommunications collocation facility for which subsequent
1032 collocation is a permitted use pursuant to California law. Only those facilities that fully comply with
1033 the eligibility requirements set forth in California Government Code Section 65850.6, or its
1034 successor provision, and which strictly adhere to the requirements and regulations set forth in this
1035 section shall qualify as a wireless telecommunications collocation facility.

1036 B. **Definitions.** For the purposes of this section, the following terms are defined as follows:

- 1037 1. **“Collocation Facility”** means the placement or installation of wireless facilities, including
1038 antennas, and related equipment, on, or immediately adjacent to, a wireless
1039 telecommunications collocation facility.
- 1040 2. **“Wireless Telecommunications Facility”** means equipment and network components
1041 such as towers, utility poles, transmitters, base stations, and emergency power systems
1042 that are integral to providing wireless telecommunications services.
- 1043 3. **“Wireless Telecommunications Collocation Facility”** means a wireless
1044 telecommunications facility that includes collocation facilities.
- 1045 C. **Procedures.** An application for a Wireless Telecommunications Collocation Facility under
1046 California Government Code Section 65850.6 shall be processed in the same manner as an
1047 application for 6409(a) approval is processed, except that where the process requires justification
1048 for the 6409(a) approval, the applicant shall instead provide the justification for a Wireless
1049 Telecommunications Collocation Facility under California Government Code Section 65850.6.
- 1050 D. **Requirements.** All requirements, regulations, and standards set forth in this chapter for a
1051 wireless telecommunications facility shall apply to a wireless telecommunications collocation
1052 facility; provided, however, the following shall also apply to a wireless telecommunications
1053 collocation facility:
- 1054 1. The applicant for a wireless telecommunications collocation facility permit shall describe
1055 or depict:
- 1056 (a) The wireless telecommunications collocation facility as it will be initially built;
1057 and
- 1058 (b) All collocations at full build-out, including, but not limited to, all antennas,
1059 antenna support structures, and accessory equipment.
- 1060 2. Any collocation shall use screening methods substantially similar to those used on the
1061 existing wireless telecommunications facilities unless other optional screening methods
1062 are specified in the conditions of approval.
- 1063 3. A wireless telecommunications collocation facility permit shall not be approved unless an
1064 environmental impact report, negative declaration, or mitigated negative declaration
1065 was prepared and approved for the wireless telecommunications collocation facility.
- 1066 E. **Permitted Use.** Notwithstanding any other provision of this chapter, a subsequent
1067 collocation on a wireless telecommunications collocation facility shall be a permitted use only if all
1068 of the following requirements are satisfied:
- 1069 1. The wireless telecommunications collocation facility:
- 1070 (a) Was approved after January 1, 2007, by discretionary permit;

1071 (b) Was approved subject to an environmental impact report, negative
1072 declaration, or mitigated negative declaration; and

1073 (c) Otherwise complies with the requirements of California Government Code
1074 Section 65850.6(b), or its successor provision, for addition of a collocation
1075 facility to a wireless telecommunications collocation facility, including, but not
1076 limited to, compliance with all performance and maintenance requirements,
1077 regulations and standards in this chapter and the conditions of approval in the
1078 wireless telecommunications collocation facility permit; and

1079 2. The collocations were specifically considered when the relevant environmental
1080 document was prepared for the wireless telecommunications collocation facility.

1081 3. Before collocation, the applicant seeking collocation shall obtain all other applicable non-
1082 discretionary permits, as required pursuant to the Mill Valley Municipal Code.

1083 F. **New or Amended Permit.** Except as otherwise provided above, approval of a new or
1084 amended permit shall be required when the facility is modified other than by collocation in
1085 accordance with this section, or the proposed collocation:

1086 1. Increases the height of the existing permitted telecommunications tower or otherwise
1087 changes the bulk, size, location, or any other physical attributes of the existing permitted
1088 wireless telecommunications collocation facility unless specifically permitted under the
1089 conditions of approval applicable to such wireless telecommunications collocation
1090 facility; or

1091 2. Adds any microwave dish or other antenna not expressly permitted to be included in a
1092 collocation facility by the conditions of approval.

1093 G. **Appeals.** Notwithstanding any provision of the Mill Valley Municipal Code to the contrary,
1094 including but not limited to Section 20.62.060, any applicant may appeal a decision by the zoning
1095 administrator. The appeal must be filed within 10 days from the zoning administrator's decision. The
1096 appeal must state in plain terms the grounds for reversal and the facts that support those grounds.
1097 The City manager shall serve as the appellate authority for all appeals of all actions of the zoning
1098 administrator taken pursuant to this section. The City shall provide notice for an administrative
1099 hearing by the City manager. The City manager shall limit its review to whether the project should
1100 be approved or denied in accordance with the provisions in this section. The decision of the City
1101 manager shall be final and not subject to any further administrative appeals.

1102 **20.73.160 Business License**

1103 A permit issued pursuant to this chapter shall not be a substitute for any business license otherwise
1104 required under the Mill Valley Municipal Code.

1105 **20.73.170 Emergency Deployment**

1106 In the event of a declared federal, state, or local emergency, or when otherwise warranted by
1107 conditions that the zoning administrator deems to constitute an emergency, the zoning
1108 administrator may approve the installation and operation of a temporary wireless
1109 telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such reasonable
1110 conditions that the zoning administrator deems necessary.

1111 **20.73.180 Operation and Maintenance Standards**

1112 A. All wireless telecommunications facilities must comply at all times with the following
1113 operation and maintenance standards. All necessary repairs and restoration shall be completed by
1114 the permittee, owner, or operator within 48 hours:

1115 1. After discovery of the need by the permittee, owner, operator or any designated
1116 maintenance agent; or

1117 2. After permittee, owner, operator, or any designated maintenance agent receives
1118 notification from a resident or the zoning administrator.

1119 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory
1120 equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility
1121 site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1122 1. General dirt and grease;

1123 2. Chipped, faded, peeling, and cracked paint;

1124 3. Rust and corrosion;

1125 4. Cracks, dents, and discoloration;

1126 5. Missing, discolored, or damaged artificial foliage or other camouflage;

1127 6. Graffiti, bills, stickers, advertisements, litter and debris;

1128 7. Broken and misshapen structural parts; and

1129 8. Any damage from any cause.

1130 C. All trees, foliage or other landscaping elements approved as part of the facility shall be
1131 maintained in good condition at all times, and the permittee, owner and operator of the facility shall
1132 be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any
1133 approved landscaping plan may be made until it is submitted to and approved by the zoning
1134 administrator.

1135 D. The permittee shall replace its facilities, after obtaining all required permits, if maintenance

1136 or repair is not sufficient to return the facility to the condition it was in at the time of installation.

1137 E. Each facility shall be operated and maintained at all times in compliance with applicable
1138 federal regulations, including FCC radio frequency emissions standards.

1139 F. Each facility shall be operated and maintained to comply at all times with the noise
1140 regulations of this chapter and shall be operated and maintained in a manner that will minimize
1141 noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance
1142 activities that will be audible beyond the property line shall only occur between the hours of 7:00
1143 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are
1144 approved by the zoning administrator. Backup generators, if permitted, shall only be operated
1145 during periods of power outages or for testing.

1146 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be
1147 flown and shall be properly maintained at all times.

1148 H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance
1149 with the standards set forth in this section and the conditions of approval.

1150 **20.73.190 No Dangerous Conditions or Obstructions Allowed**

1151 No person shall install, use or maintain any wireless telecommunications facility which in whole or in
1152 part rests upon, in or over any public sidewalk or parkway, when such installation, use or
1153 maintenance endangers or is reasonably likely to endanger the safety of persons or property, or
1154 when such site or location is used for public utility purposes, public transportation purposes or other
1155 governmental use, or when such facility unreasonably interferes with or impedes the flow of
1156 pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or
1157 egress from any residence or place of business, the use of poles, posts, traffic signs or signals,
1158 hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects
1159 permitted at or near said location.

1160 **20.73.200 Permit Expiration**

1161 A. A permit for any wireless telecommunications facility shall be valid for a period of 10 years,
1162 unless the Planning commission authorizes a longer period or pursuant to another provision of the
1163 Mill Valley Municipal Code the permit lapses sooner or is revoked. At the end of such period, the
1164 permit shall expire.

1165 B. A permittee may apply for extensions of its permit in increments of no more than ten years
1166 and no sooner than twelve months prior to expiration of the permit.

1167 C. If a permit has not expired at the time an application is made for an extension, the zoning
1168 administrator may administratively extend the term of the permit for subsequent ten-year terms
1169 upon verification of continued compliance with the findings and conditions of approval under which
1170 the application was originally approved, as well as any other applicable provisions of the Mill Valley
1171 Municipal Code that are in effect at the time the permit extension is granted.

1172 1. At the zoning administrator's discretion, additional studies and information may be
1173 required of the applicant.

1174 2. If the zoning administrator determines that the facility is nonconforming or that
1175 additional conditions of approval are necessary to bring the facility into compliance with
1176 the provisions of the Mill Valley Municipal Code that are then in effect at the time of
1177 permit expiration, the zoning administrator shall refer the extension request to the
1178 Planning commission.

1179 D. The request for an extension shall be decided by the Planning commission if the permit
1180 expired before the application is made for an extension or if the zoning administrator refers the
1181 matter to the Planning commission. After notice and a public hearing, the Planning commission may
1182 approve, conditionally approve, or deny the extension.

1183 **20.73.210 Cessation of Use or Abandonment**

1184 A. A wireless telecommunications facility is considered abandoned and shall be promptly
1185 removed as provided herein if it ceases to provide wireless telecommunications services for 90 or
1186 more consecutive days. If there are two or more users of a single facility, then this provision shall
1187 not become effective until all users cease using the facility.

1188 B. The operator of a facility shall notify the City in writing of its intent to abandon or cease use
1189 of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing
1190 or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall
1191 provide written notice to the zoning administrator of any discontinuation of operations of 30 days
1192 or more.

1193

1194 C. Failure to inform the zoning administrator of cessation or discontinuation of operations of
1195 any existing facility as required by this section shall constitute a violation of any approvals and be
1196 grounds for:

1197 1. Prosecution;

1198 2. Revocation or modification of the permit;

1199 3. Calling of any bond or other assurance required by this chapter or conditions of approval
1200 of the permit;

1201 4. Removal of the facilities by the City in accordance with the procedures established under
1202 the Mill Valley Municipal Code for abatement of a public nuisance at the owner's
1203 expense; and

1204 5. Any other remedies permitted under the Mill Valley Municipal Code.

1205 **20.73.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment**

1206 A. **Permittee's removal obligation.** Upon the expiration date of the permit, including any
1207 extensions, earlier termination or revocation of the permit or abandonment of the facility, the
1208 permittee, owner or operator shall remove its wireless telecommunications facility and restore the
1209 site to its natural condition except for retaining the landscaping improvements and any other
1210 improvements at the discretion of the City. Removal shall be in accordance with proper health and
1211 safety requirements and all ordinances, rules, and regulations of the City. The facility shall be
1212 removed from the property within 30 days, at no cost or expense to the City. If the facility is located
1213 on private property, the private property owner shall also be independently responsible for the
1214 expense of timely removal and restoration.

1215 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its
1216 facility and restore the property within 30 days after expiration, earlier termination, or revocation of
1217 the permit, or abandonment of the facility, shall be a violation of the Mill Valley Municipal Code,
1218 and be grounds for:

1219 1. Prosecution;

1220 2. Calling of any bond or other assurance required by this chapter or conditions of approval
1221 of permit;

1222 3. Removal of the facilities by the City in accordance with the procedures established under
1223 the Mill Valley Municipal Code for abatement of a public nuisance at the owner's
1224 expense; or

1225 4. Any other remedies permitted under the Mill Valley Municipal Code.

1226

1227 C. **Summary removal.** In the event the zoning administrator determines that the condition or
1228 placement of a wireless telecommunications facility located in the public right-of-way constitutes a
1229 dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety,
1230 or determines other exigent circumstances require immediate corrective action (collectively,
1231 “exigent circumstances”), the zoning administrator may cause the facility to be removed summarily
1232 and immediately without advance notice or a hearing. Written notice of the removal shall be served
1233 upon the person who owns the facility within five business days of removal and all property
1234 removed shall be preserved for the owner’s pick-up as feasible. If the owner cannot be identified
1235 following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility
1236 shall be treated as abandoned property.

1237 D. **Removal of facilities by City.** In the event the City removes a facility in accordance with
1238 nuisance abatement procedures or summary removal, any such removal shall be without any
1239 liability to the City for any damage to such facility that may result from reasonable efforts of
1240 removal. In addition to the procedures for recovering costs of nuisance abatement, the City may
1241 collect such costs from the performance bond posted and to the extent such costs exceed the
1242 amount of the performance bond, collect those excess costs in accordance with the Mill Valley
1243 Municipal Code. Unless otherwise provided herein, the City has no obligation to store such facility.
1244 Neither the permittee nor the owner nor operator shall have any claim if the City destroys any such
1245 facility not timely removed by the permittee, owner, or operator after notice, or removed by the
1246 City due to exigent circumstances.

1247 **20.73.230 Effect on Other Ordinances**

1248 Compliance with the provisions of this chapter shall not relieve a person from complying with any
1249 other applicable provision of the Mill Valley Municipal Code, including but not limited to obtaining
1250 any necessary encroachment or building permits. In the event of a conflict between any provision of
1251 this chapter and other provisions of the Mill Valley Municipal Code, this chapter shall control.

1252 **20.73.240 Effect of State or Federal Law**

1253 In the event that state or federal law prohibits discretionary permitting requirements for certain
1254 wireless telecommunications facilities, the permits required by this chapter for those facilities shall
1255 be deemed to be ministerial permits. For those facilities, in lieu of a conditional use permit, a
1256 ministerial permit shall be required prior to installation or modification of a wireless
1257 telecommunications facility and all provisions of this chapter shall be applicable to any such facility
1258 with the exception that the required permit shall be reviewed and administered as a ministerial
1259 permit by the zoning administrator rather than as a discretionary permit. Any conditions of
1260 approval set forth in this chapter or deemed necessary by the zoning administrator shall be imposed
1261 and administered as reasonable time, place and manner rules.